

# **FREEDOM OF INFORMATION TRAINING MANUAL**



**FOR CIVIL SOCIETY ORGANISATIONS**



**FREEDOM OF INFORMATION  
TRAINING MANUAL**



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**November 2013**



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## PREFACE

After more than 12 years of relentless civil society advocacy, the Freedom of Information Bill was passed by the National Assembly in May 2011 and signed into Law four days later by President Goodluck Jonathan on May 28, 2011.

The Law grants every person the right to request information from government bodies or institutions and from certain types of private organizations. It applies to all arms of government, namely the Executive, Legislature and Judiciary.

Two years into the existence of the Law, it is already in use, predominantly by civil society organizations. However, the level of usage even by civil society organizations is a far cry from expectations and the potential of the Law. The level of usage by other sectors of the society, especially the media community and ordinary citizens has been even less encouraging.

Yet, the effective implementation of the Law, even through widespread usage by various sectors of the society, will be critical to the realization of its potential as an instrument for deepening Nigeria's democracy and tackling the pervasive corruption in the country.

Sensitization of citizens about the existence of the Law and how to use it have been very scanty as a result of which most Nigerians are yet to appreciate the enormous potential that the new law holds for open and transparent governance and in empowering them generally.

The success of the Act in the fight against corruption, in improving public participation in governance and in ensuring democratic accountability will depend on widespread awareness and understanding, effective implementation and the routine usage of the law by key stakeholders.

To ensure that the FOI Act delivers on its potential, it is imperative that civil society organizations, alongside government agencies, the media and other sectors of the society, acquire the skills and knowledge required to successfully implement the Act.

Civil society organizations and the Media provide a vital link between citizens and the state, and have an important role to play in accessing and publicizing public information.

They also provide an environment necessary to enhance community cohesion and decision-making with access to information being of paramount importance.

The training manual is intended to accelerate the process of building the capacity of a key sector, namely civil society organisations, to promote the Act, use it to obtain information from public institutions and relevant private entities, and monitor its implementation, all of which will contribute significantly to a successful implementation of the Act.

Part of the rationale for the publication is to ensure that a significant number of people from different parts of the country, especially at the grassroots and community levels, are trained to use the FOI Act and thereby create a multiplier effect.

Civil society organizations across all sectors and at different level can conduct simple, low-cost step-down training for community-based or grassroots organizations and ordinary citizens in the communities where they are based to enable such organizations and individuals to also make requests for information from public and private institutions covered by the Act. This manual can facilitate such a process.

The Manual is a step-by-step approach to delivering FOI training in very simple language and procedures. It is designed to enable the delivery of FOI training programmes or activities to small groups of people as well as larger meetings (anything from groups of 5 people to 50 persons). It can also be useful for training programmes ranging from two-hour sessions to two-day training programmes. This will make it easy for organizations to incorporate such training activities into their regular events such as conferences, workshops, seminars, General Meetings, etc., which will not require significant additional funds where such activities are already planned or funded.

In the last two years, there has been a steady increase in the number of freedom of information training programmes targeted at representatives of civil society organizations as well as for representatives of other sectors of the society. These programmes have been of varying quality, relevance and usefulness. If applied, the manual can help to bring about some standardization in the freedom of information training programmes being carried out around the country. It can help to ensure that such training activities are of good quality, of high standards and that the information which participants at the training programmes are getting are as consistent as possible.

## INTRODUCTION

Four years ago, the Freedom of Information (FOI) Act was enacted into Law in Nigeria and the country thereby became the sixth African nation with a law that promotes citizens access to information held by public institutions and the services these institutions perform.

To understand the FOI Act and how to use it, one needs to have a sound knowledge of this piece of legislature, its institutional and operational framework for implementation, role of the oversight mechanisms and the role of judiciary for enforcement. Regardless of the Act's solid framework, a lot depends on the citizens understanding of the right to information and their interest in ensuring this law is enforced.

This training manual aspires to build the capacity of civil society groups and other stakeholders to effectively engage the FOI Act by using it to access government held information and to train the public on the law, using the law, their rights under the law and enforcing the law.

### **Manual Aim**

The manual aims to strengthen the capacity of civil society organizations and the society on the FOI Act by developing training materials and activities which can be used for transferring knowledge.

The FOI Act training manual plans to provide guidelines on using the Law in engaging public institutions. In ensuring the implementation of the Law, it is necessary to develop a comprehensive training guide that can be easily replicated across different sectors of the society and localized to the farthest corner of the country with the intentions to meet identified outcomes. Citizens need to be engaged in governance and this manual creates a beacon for one of such ways to play participatory role in government.

With that in mind, this manual is designed as a resource tool for the public. The manual seeks to ensure that regardless of individual's level of enlightenment about the FOI Act, when the manual is utilized, it guarantees a change in mindset of the recipient. The manual can be also used for the following:

- It is also envisaged that the manual will be used for step down trainings within the different sectors of society and thematic areas.
- This manual will also provide a template for training programmes in order to ensure that it is an all encompassing instrument of instruction. It should also be emphasized that this manual cannot replace an in-person training course, but should primarily be seen as a support tool for a training workshop.

- It is also designed to be a training of trainers manual on access to information

### **Guide to using the Manual**

The manual provides a generic template which can be used in four main ways:

- It will help in the design and development of FOI training workshop;
- It will help the facilitators and resource persons deliver FOI training programmes;
- Individuals interested in obtaining information from government institutions can use the FOI in achieving that goal through this manual
- It also can be used to monitor the effective implementation of the FOI act.

The manual layout is designed for a two-day workshop. Ideally, FOI training should be for two to three days but this can vary according to the specific objectives of the workshop, sort of participants, location, time and resources.

At some points in the manual, there will be opportunities for ice breakers, group exercises and simulation. A list of questions will be identified at the end of each session which will serve as topics for brain storming. Be as it may, not all questions can be taken at brain storming session, so selected questions will be based on discretion of the facilitator or other questions can be formulated to meet participants need.

## PLANNING AN FOI TRAINING

### Overview

This manual is meant to be used by those who have never planned training before and for those who are seasoned workshop planners. This session discusses the actions a workshop planner needs to consider and act on in order to have a successful hitch free programme. The list identified here is not mandatory but will go a long way in ensuring the success of the event.

- **Identifying and Selecting Participants**

Participants will be identified according to the thematic area of focus. An appropriate number of participants for an in-depth training vary from 5 to 50 persons depending on the number of facilitators on hand. Due to the practical nature of this manual, it is recommended that 3 facilitators are on hand for such training. Though this is also based on the peculiarities of a given workshop, for instance a larger group on an informal setting with a shorter agenda can have just one facilitator for the training.

The FOI Act can be used in every sphere of society. Everyone can use the FOI Act from students, doctors, civil society groups, religious bodies, artisans, youth groups, trade unions, professional associations, private bodies, illiterates to foreigners. Depending on identified objective of the training, participants will be selected according to different criteria regardless of fore-knowledge or no-knowledge of the FOI Act.

- **Follow-up on Invited Participants**

Selected participants will be invited to the workshop via any medium of choice. What is most important is to follow up on such an invitation to ascertain if the identified/invited participant will be attending the workshop.

This is necessary to avoid, either a low turnout of participants in which the workshop may be ineffective and resources wasted or a higher number of participants turn up which was not catered for.

It is considered best practice to ensure that an invitation carries specific instructions on how to confirm and deadline for confirmation. The invitation should also state that in the event that the invited participant is not available, the invited participant should immediately suggest someone to replace their spot at the workshop. The organizers of the workshop will send a new invitation to the suggested participant. This gives the organizers the opportunity to either deny or accept the suggested participant depending on the expected contribution of the participant to the workshop.

In addition, a lot of participants forget dates of workshops and meetings due to busy schedules. It is necessary to follow up on all participants between a week and 3 days to

the workshop to remind them of the scheduled training.

- **Informing Participants**

Prior to the date for the training, participants should be provided with basic background information on the training. This will give them fore-knowledge of what to expect at the training. It will also enable them to prepare practical questions before hand based on what is applicable to the participant's area of operation.

- **Group Selection**

If the agenda has group exercises listed as part of the activities at the training, it is best to divide the participants into these groups before the workshop based on the set Exercise. Participants are divided into groups based on different factors like area of work, gender, geographical location, age, education and so on. This is a more effective way of achieving desired results instead of randomly creating groups at workshops especially in FOI training when a lot of practical sessions necessitate working in groups according to programme sectors.

Grouping participants have shown that interactions and peer sharing is more effective in smaller numbers. The grouping will be reflected during some of the sessions of which the whole group at the workshop breaks into sub groups as requested by the facilitator of which at the end of the exercise the group will report back to plenary.

In a situation of planning a workshop without sending invitations to participants nor receiving confirmation of attendance, groups can be formed randomly either by sharing them according to the way they registered or by picking numbers 1 to 5. All the participants who picked number 1 are grouped together, same goes for 2, 3, 4 and 5. You can also be creative about the grouping which can be according to colours worn by the participants or colours of folders and so on.

It is important to keep in mind that the grouping will vary over the course of the training. Each group will have a spokesperson who will present the group's report when joined back to plenary.

- **Location Selection**

Ideal location for FOI training is somewhere that has a lot of space for group work and exercises. That notwithstanding any location will do (indoor or outdoor) as long as the participants are not distracted by other activities happening in the area. For instance, If the opportunity presents itself for 4 hour training on FOI to market women, it will be important that you maximize the full use of that valuable 4hours by choosing a location that reduces distraction but encourages concentration. However, the location of most of the invited participants should also be considered while selecting location for FOI training. The location for the training has to be within the zone where majority of the invited participants are situated.

- **Equipments and material**

The following materials should be prepared before the workshop:

- Projector screen or sheet
- Projector
- Note pads
- Folders/bags/files
- Pens/pencil
- Multi colored Markers
- Flip chart
- Flip chart paper
- Post-it notes
- Name tags
- Printed out resource materials
- Copies of the FOI Act 2011
- Public address system

Not all identified materials are mandatory. The facilitator should know which of these materials are important to the training.

- **Developing the Workshop Agenda**

For an effective meeting it is necessary to produce a good agenda which takes into cognizance the specific goal of the workshop. A good FOI workshop should hold for at least two days. (See annex 1)

Not everyone has the luxury of embarking on two day training, so in case of a shorter period of time it is necessary to identify and select the sessions that is most appropriate in meeting training objectives.

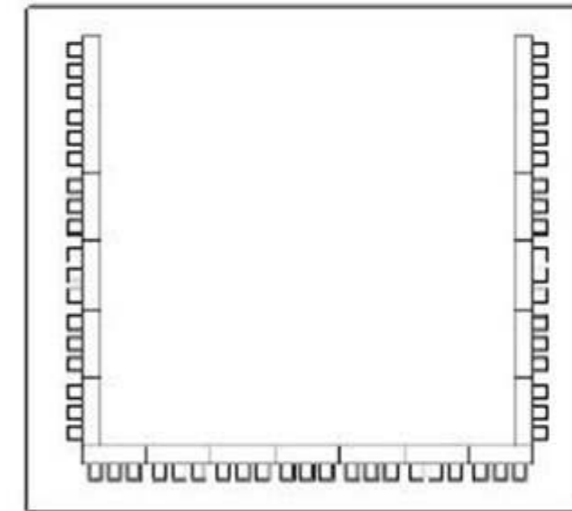
Regardless of the training duration it is important to create opportunity for time-outs or break. The FOI training can be technical and intense. It is necessary to be in tune with participant's needs and attention span. This will help in producing a good agenda that has the participant's assimilation abilities in mind.

Moreover, no matter how timely the sessions run, always give room for spill over. Some brainstorming session may take a life of its own and can derail the timing of the workshop. The agenda should have flexibility room to adapt to these issues.

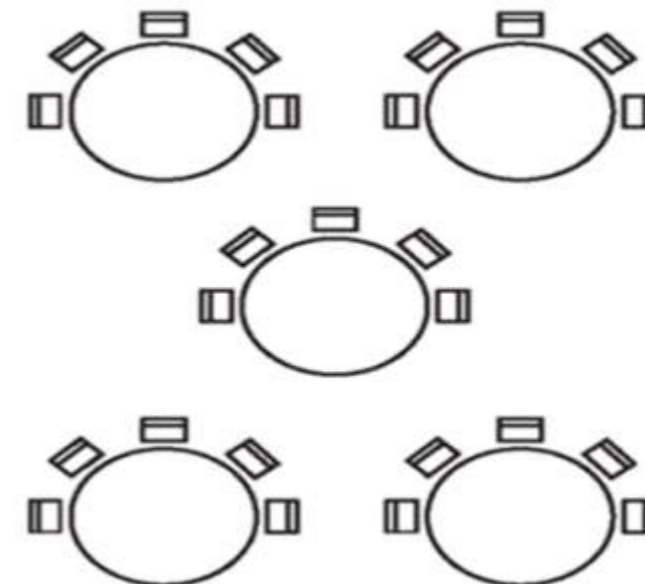
- **Workshop Floor Plan**

This can make or mar a workshop and it is one of the most over looked part of planning a workshop. The way the venue is arranged encourages or discourages the free flow of discussion between the facilitator and the participants. It is pretty uncomfortable when a seat position means you will be staring at the back of someone's head instead of having a direct uninterrupted view.

We recommend the following two room arrangement style for an effective workshop:



**U- Shape Style Floor Plan**



**Cabaret Style Floor Plan**



## PRE-WORKSHOP ACTIVITY

### Overview

This session handles all activities on the morning or beginning of the planned workshop. It is necessary that supporting staff and or facilitators are properly briefed on handling the day's activities and expectations at the end of the workshop. Some of these activities are listed below.

- **Registration**

All participants should arrive at the latest time of 30mins before the workshop starts for registration while the organizers must have made a last-minute contact with trainers and facilitators, making sure they are on ground as at the time of registration. Registrations are necessary in identifying the demographic of attendees and as a resource tool for follow-up after the training. The registers should have columns which capture: Name, Organisation, Location, Gender, Email, Phone Number and Signature. (See annex 2)

Folders, notepads, pens or pencils and other resource materials are given to the participants at the registration desk.

- **Pre - Workshop Test Questionnaire**

A pre – workshop test questionnaire is issued at the registration desk for participants to take to their seats and fill. The questionnaire responses provide baseline information on the participants' FOI knowledge. The questionnaire will be collected from the participants before the workshop starts. (See annex 3)

- **Opening Session**

This session serves as an introduction to the workshop.

**(Duration: 15 - 20 Minutes)**

**1. Introduction of trainers and participants:** The moderator of the training starts the workshop by requesting introductions of the participants' one after the other to the rest of the group. At the end of the introduction, the moderator introduces himself/herself and or the workshop team.

**2. Icebreaker:** The trainer can ask participants to say their names, where they work, what they do for the organization they work for and or what the participants likes to do as a hobby. The responses received can give interesting perspective of the participants. It also makes everyone relaxed since they are talking about one of the most interesting topics everyone enjoys talking about which is 'themselves'.

**3. Training Objectives:** The workshop begins with stating a clear objective of

what the programme intends to achieve at the end of training. Objectives reflect the expected outcome from participations at the end of the training. The objectives should be simple and straightforward.

**4. Participant Expectations:** The participants can use post-it notes and write down their expectations from the training. The post-it notes will be placed on a wall for future reference during the training. This is more enjoyable especially for shy participants who are scared of speaking in public or in large groups.

**5. Introduction of Agenda and Ground Rules:** This is a narrative of the agenda which provides a synopsis of what each topic entails and the designated time for the topic.

The trainer will suggest some ground rules and request participants to add some ground rules which he will write down on the flip chat, such as:

- Respect others opinions
- Keep to time
- All mobile phones on silent
- No side talk
- All participants must attend all sessions
- Participants should indicate by raising their hands to ask a question or to make a comment

The facilitator will conclude this session by informing the participants to either wait till the end of a presentation to ask questions or to interject in between presentation but it is encouraged that each session should be as participatory as possible.

### **Exercise 1**

The Facilitator will ask the participants the following questions:

- ? How many people have ever heard of the FOI Act prior to the invitation to attend the workshop?
- ? How many people have seen a copy of the FOI Act 2011?
- ? How many people have read the FOI Act 2011?

This will encourage each participant to note that he/she may not be the only one ignorant of the law and help to ensure more active participation.

# INTRODUCTION

## SESSION 1

### Introducing Freedom of Information

#### Overview

This session introduces participants to the benefits of the FOI Law and why it is being campaigned and adopted by different countries.

By the end of the session, participants should be able to:

- Explain the benefits of the law
- Identify international and legal status related to the Law

(Duration: 30- 45 Minutes)

#### Exercise 2

Break up the group in smaller numbers. Give each group a piece of paper. Ask them to discuss for 10 minutes on, "What human rights are and why are they important"?

Each group will have a leader that will present their group answers.

This exercise aims to show that human rights in different words mean same thing.

#### Lesson 1.1: Basic Concepts

#### What is Information?

This can be explained to mean having the knowledge of something that can be used for a purpose. Information is useful because it helps guide an individual or a group's decision making process. Everyone needs information to be able to carry out timely, accurate and appropriate actions. Information is crucial and powerful since it can affect the behavior or the outcome of a decision.

#### Question 1

What is the difference between a right and a freedom?

#### What are Human Rights?

Human rights are held equally by everyone all over the world. These fundamental rights are held by everyone by the mere fact that you are human. These are inalienable rights which a human being has and are rights inherent to all human beings. To violate someone's human rights is to treat that person as the person is not a human being.

#### What are Freedoms?

Freedoms are the ability of people to carry out or undertake actions without interference, either by governments or other actors. Freedom is the right and capacity of people to determine their own actions. An individual can think, act and speak as they choose without interference or obstacles.

#### What is Freedom of Information



\*\* culled from Free Speech Debate

Freedom of Information is the right to access information held by government and public institutions. It stems from the right to freedom of expression which is recognized by Article 19 of the Universal Declaration of Human Rights (1948) and states that freedom of expression encompasses the freedom "to seek, receive and impart information and ideas through any media and regardless of frontiers".

It can also be found in other international instruments including International Covenant on Civil and Political Rights (1966), the American Convention on Human Rights (1969), African Charter on Human Rights, Brisbane Declaration on Freedom of Information: The Right to Know (2010), the Maputo Declaration on Fostering Freedom

of Expression, Access to Information and Empowerment of People (2008) and the Dakar Declaration on Media and Good Governance (2005). It is also covered in other treaties within the African region such as: Article 6 of the African Charter on Values and Principles of Public Service and administration; Article 9 of the African Charter on Human and Peoples Rights, Articles 9 and 12 of the African Union Convention Against Corruption; Article 3 of the African Statistics Charter; Article 19 of the African Charter on Democracy, Elections and Governance; and Articles 10(3)(d) and 11(2)(i) of the African Union Youth Charter.

The underlying philosophy of Freedom of Information is aptly captured by Article IV (i) of the Declaration of Principles on Freedom of Expression in Africa which states that:

*“Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by Law.”*

The right to information recognizes some limitations and that some information still need to be kept secret. Examples of these types of information are national security information, personal information, sensitive commercial information, etc. But even so, there is a duty on governments to justify any refusal to disclose any information to the public.

#### **Why is Freedom of Information Important?**

Information is central to human existence and it is critical for decision making whether as an individual or as organizations. The quality of decisions we make often depends on the quality of the information that we have. If we have no information, we probably will not be able to make decisions. We would not know what to do because we do not know the options that we have.

### **Lesson 1.2: Defining the Freedom of Information Act 2011**

#### **What is the Nigerian Freedom of Information Act, 2011?**

The Nigerian Freedom of Information (FOI) Act 2011 gives any person the right to ask any public institution for any record, data or information that is held in the institution's custody. Anyone can ask for information regardless of age, gender, disability, citizenship or geographical location. The Law gives a legal footing to demand for information from such government bodies except on information that is exempted in the Law. When information is denied which is not under the exemptions, the Law states that the requester can take the public institution to court in order for the court to compel the public institution to release the requested information.

#### **Why is Freedom of Information Law necessary?**

As can be seen, it is a fundamental human right established under international Law of which every person are entitled to enjoy. An FOI Law enhances our dignity as human beings because of its ability to enable more effective individual decision making.

Freedom of information Laws activate the important components for enabling a thriving democratic society. The Nigeria FOI Act does the same especially in compelling government organizations to be more proactive and efficient in information disclosure and encourage citizen's participation in governance. An informed citizenry makes good decisions. It is necessary also to:

- Tackle the challenge of corruption in government
- Eradicate the culture of secrecy
- Enable a more transparent and accountable government
- Play decisive role in government by understanding government reasons for an action
- Improve public participation in governance
- Encourage good governance and democracy in society

When the FOI Act is actively engaged then visible dividends of democracy can be witnessed for instance, roads are built, health centers are adequately equipped, electoral fraud are reduced, financial embezzlement are exposed and so on.

#### **Key Benefits of the FOI Law are:**

- It is a major tool for fighting corruption - Journalists, CSOs and ordinary citizens can use the Law to expose corruption and wrongdoing.
- It enhances democratic accountability and good governance because it enables the public to scrutinize the actions and decisions of leaders and assess their performance.
- It facilitates democratic participation as it enables citizens to participate effectively in decision-making on issues that affect them.
- It promotes respect for human rights because human rights violations, like corruption, flourish in a climate of secrecy.
- It facilitates access to reports of investigations into allegations of human rights violations.
- It promotes a greater sense of belonging and ownership of development initiatives by citizens.
- It will help improve record-keeping in public institutions as it will ensure that government records are properly kept and will reasonably guarantee the integrity of such records and documents.
- The quality of decisions at governmental level will improve as citizens will be able to make informed contributions in the decision-making process.
- It improves infrastructure and facilities as monies voted are more likely to be

spent for such projects while leakages are minimized.

- It helps to build trust and confidence in government policies and decisions as citizens get up-to-date information about the affairs of government and know what is going on.

### **Exercise 3**

On each table request that participants discuss and write down the advantages and disadvantages of access to Information on provided post -it notes. The notes should be placed on a row according to advantage and disadvantages on a part of the training room wall. The number of post - it notes on the wall will reflect that, the general concession by the group is that there is more advantage to having freedom of information than disadvantage.

## **SESSION 2**

### Global Status of FOI Law

#### **Overview**

This session highlights some of the countries that have FOI Legislation. It also talks about the local landscape of the Nigerian Law.

At the end of the session, participants will be able to:

- Understand the history of FOI.
- Recognize the Nigerian landscape and its relation to FOI.

(Duration: 20 - 30 Minutes)

### **Lesson 2.1: Universality of the Law**

#### **Exercise 4**

Share copies of identified regional and international instruments where access to information is noted and ask identified participants to read it out. Ask a volunteer to try and explain what the portion read out means.

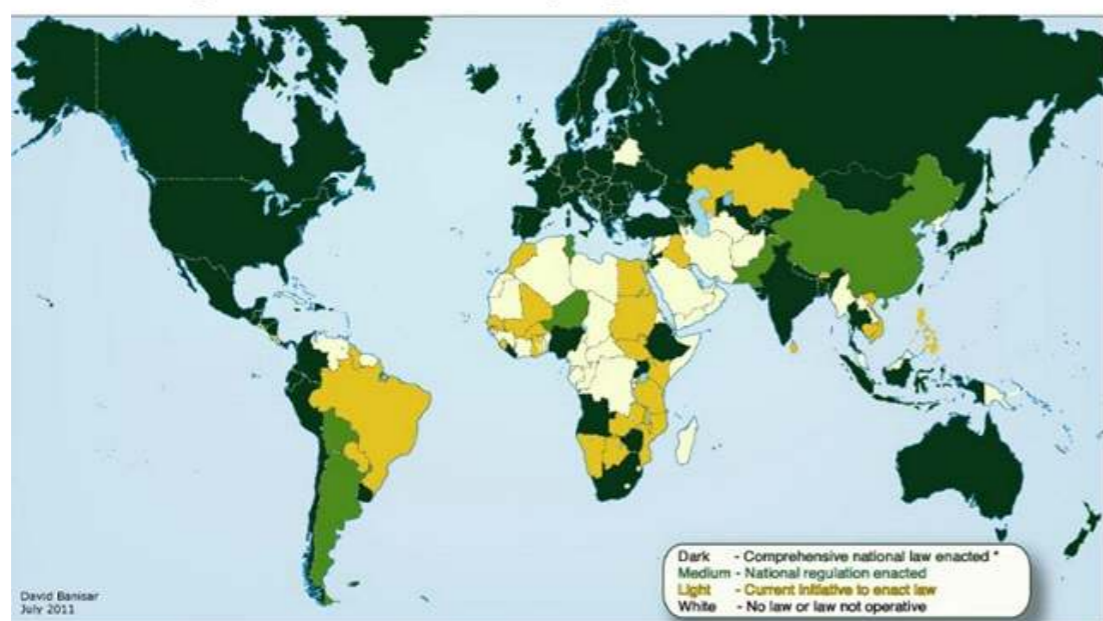
Participants will see the global nature of rights and laws that protect access to information.

#### **FOI around the World**

As stated earlier, Freedom of Information is recognized as a fundamental human right under international Law. The right is enshrined in regional and international human rights instruments. States are therefore legally obliged to give effect to the right through legislative measures and effective implementation.

The Right to Information and the obligation of states to give effect to it has been judicially recognized by international tribunals. The first binding international decision was rendered on 19 Sept 2006 by the Inter-American Court of Human Rights in *Claude Reyes et al v. Chile*, in which the Court held clearly that access to public information is a fundamental human right. The right to information is increasingly being recognized as a tried and true path to transparency and accountability of government.

### National Right to Information Laws, Regulations and Initiatives 2011



The world's first FOI Law was adopted in the Kingdom of Sweden in 1766. After Sweden, Freedom of Information Laws was later adopted in:

- Finland (1951)
- The United States (1966)
- Denmark and Norway (1970)
- The Netherlands and France (1978), and
- Australia, Canada and New Zealand (1982).

About 95 countries now have FOI Laws in 2013. Only 12 countries in Africa have such Laws and they are:

- South Africa – Promotion of Access to Information Act (2000)
- Zimbabwe – Access to Information and Protection of Privacy Act (2002)
- Angola - Access to Official Documents Law (2002)
- Uganda – Access to Information Act (2005)
- Ethiopia - Law on Mass Media and Freedom of Information (2008)
- Liberia - Freedom of Information Act (2010)
- Guinea-Conakry - Organic Law on the Right of Access to Public Information (2010)
- Nigeria – Freedom of Information Act (2011)
- Niger - Law on Access to Public Information and Administrative Documents (2011)
- Tunisia - Decree on Access to Administrative Documents (2011)

- Rwanda- Access to Information Law (2013)
- South Sudan – Access to Information Law (2013)

Although only 95 out of 193 countries now have FOI Laws, most of the world's 7 billion people now enjoy a legal right of access to information.

### Freedom of Information Landscape in Nigeria

The Nigerian public institution system is one that is entrenched in a culture of secrecy. So many Laws stand in the way of access to information such as the Official Secrets Act which makes it an offence not only for civil servants to give out government information, Evidence Act, the Public Complaints Commission Act, the Statistics Act and the Criminal Code and so on. Access to information is negligible and or denied when information is requested by civil society, media or the general public.

Moreover, Public institutions are inundated with red tapes and bureaucracy which hinders access to information. Risk-free information are classified 'top secret' and record keeping is haphazardly done making it a long process to search and locate information in mountain of table high files.

With the passage of the Nigerian FOI Act in 2011, it turns a somewhat difficult access to information landscape into a more open government. Though the Law is 2 years old, it is important that the Nigerian society starts making use of the Law in order to ensure its applicability and practicability in promoting good governance.

### Question 2

Facilitator can ask the following questions:

- ? How else can the FOI help in governance?
- ? Does FOI affect an individual? How?
- ? How can FOI improve the effectiveness of organisational goals



## SESSION 3

### FOI Legal Status

#### **Overview**

This session explains the legal standing of the Law over other laws. It identifies the legislative indices and mandate as stated in the Law to public institutions.

By the end of the session, participants should be able to understand the FOI background both legal and political.

**(Duration: 20 - 30 Minutes)**

#### **Lesson 3.1: Purpose of the FOI Law**

##### **Exercise 5**

Share copies of the identified regional and international instruments where access to information is noted and ask identified participants to read it out. Participants will see the global nature of rights and laws that protect access to information.

#### **Right of Access to Information**

The campaign for an FOI Law in Nigeria started in 1999 and lasted for 12 years. It was signed into Law by President Goodluck Jonathan on May 28, 2011. The Law could have been signed earlier considering the FOI Bill was first passed by the National Assembly in 2007. The then President of Nigeria, Olusegun Obasanjo, declined to enact the Law. The campaign process was re-started in June 2007 until the Bill was again passed by the National Assembly in May 2011.

Since it was passed, everyone has the right to access any information held by government. Government hold information about various aspects of society as a custodian for the public. It is not wrong for government to hold such information since such information aids their making decisions on behalf of the citizenry but most times than not, such power is abused by these custodians. The Law gives the citizenry an enforceable right to access information held by government in order to play participatory role in government. In as much the government needs the information to run the state, the state needs the information to checkmate the government.

The FOI Act sets out in its introduction the purpose and objectives of the Law. These are:

- To make public records and information more freely available;
- To provide for public access to public records and information;
- To protect public records and information to the extent consistent with the public interest and the protection of personal privacy;
- To protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization; and
- To establish procedures for the achievement of these purposes and for other related matters.

The FOI Act establishes in very clear terms the right to information for every person. It states in section 1(1) that:

*“Notwithstanding anything contained in any other Act, Law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established.”*

Therefore, this means that every person has a legally enforceable right of access to records, documents and information held by public institutions, subject to certain exemptions stated in the Act. This right applies to legal and natural persons, Nigerian citizens and non-citizens as well as Nigerian residents and non-residents.

#### **Lesson 3.2: Public Officials and the Law**

#### **Obligation by Public Institutions to Maintain Records**

The Act defines “Public Institution” as

*“any legislative, executive, judicial, administrative or advisory body of the Government, including boards, bureau, committees or commissions of the State, and any subsidiary body of those bodies, including but not limited to committees and sub-committees which are supported in whole or in part by public funds or which expend public funds and private bodies providing public services, performing public functions or utilizing public funds.”*

The FOI Act makes it mandatory for all public institutions (ministries, departments, agencies, committees, parastatals etc) to record and keep information about their activities, operations and businesses. No Public Institution is exempted from providing information regardless of the sort of information it holds. Public institutions are also required to maintain their records and information in a manner that facilitates public access to the information.

### **Supremacy of the FOI Act**

The FOI Act supersedes the provisions of all other Acts, Laws or Regulations, except the Constitution and those Laws with constitutional flavour. It supersedes the Official Secrets Act, the Evidence Act, the Criminal Code, the Penal Code, the Federal Public Service Rules, etc. These instruments cannot be used to limit its scope or application.

The Act provides that where the question whether any public record or information should be made available arises under the Act, the question must be decided on the basis of the FOI Act, unless that information or record is otherwise exempted by the FOI Act. – S. 30(b)

The Act does not limit in any way access to official information that have normally been available to the general public.

#### **Exercise 6**

The FOI Act supersedes every other Law aside the constitution. What is your opinion on the reason for the reluctance to release information by Public Institutions citing the Act?

## **SESSION 4**

### **Elements of a Good FOI Law**

#### **Overview**

This session marks out what are the essential elements of a good FOI Law. The session lists out the identified indices of a good law which should be found in a standard FOI Law which is also encouraged to be adapted into FOI bills that are yet to be laws globally.

At the end of the session participants will be able to identify the indices of a good law in comparing it with what is obtainable in the Nigerian Law.

**(Duration: 40 - 50 Minutes)**

#### **Lesson 4.1: How to identify a good FOI Law**

#### **Question 3**

In an ideal scenario, identify the sort of indicators a good FOI law should have?

#### **Exercise 7**

Participants mention different indicators which are recorded on a flip chat. As the presentation goes on, the facilitator identifies similar indicators as mentioned by a participant as contained in the lecture

#### **Quality of a Good FOI Law**

The qualities of FOI Laws that have been passed in Africa and all over the world vary widely. Independent analysis shows that some of them are very good in providing a strong framework for the enjoyment of the right of access to information and others are of very dubious quality. In addition, many of the African FOI laws face implementation challenges.

On September 28, 2011, Access Info Europe (Spain) and Centre for Law & Democracy (Canada), launched the first detailed assessment of FOI laws in 89 countries. The assessment is based on the Right to Information (RTI) Legislation Rating Methodology which the two organisations developed as a tool to assess or rate the overall legal framework for the RTI in a country.

The Methodology provides an overall numerical assessment of how well a country

scores out of a maximum of 150 points in terms of giving legal effect to the RTI. At the heart of the Methodology is a set of 61 main Indicators, each with a possible score range (in most cases of 0-2), depending on how well the legal framework delivers on each of the indicators.

The Indicators are drawn from a wide range of international standards on the RTI and comparative study of numerous RTI laws around the world. An Advisory Council of renowned experts on the RTI advised CLD and Access Info Europe on the development of the Indicators.

The Methodology also includes detailed scoring rules, illustrating how points are allocated under each Indicator. It also has a database for recording the results from the assessment.

The methodology provides sub-ratings in 7 different thematic areas as follows:

Section	Max Points
1. Right of Access	6
2. Scope	30
3. Requesting Procedures	30
4. Exceptions and Refusals	30
5. Appeals	30
6. Sanctions and Protections	8
7. Promotional Measures	16
<b>Total score</b>	<b>150</b>

The detailed indicators evaluated whether:

- The legal framework recognises a fundamental right of access to information.
- The legal framework creates a specific presumption in favour of access to all information held by public authorities, subject only to limited exceptions.
- The legal framework contains a specific statement of principles calling for a broad interpretation of the RTI law.
- The legal framework emphasises the benefits of the right to information.

- Everyone, including non-citizens and legal entities, has the right to request information.
- The right of access applies to all materials held by or on behalf of public authorities which is recorded in any format, regardless of who produced it.
- Requesters have a right to access both information and records or documents, i.e. a right either to simply ask questions or to apply for specific documents.
- The right of access applies to the executive branch with no bodies excluded.
- The right of access applies to the legislature, including not only administrative information but all information, with no bodies excluded.
- The right of access applies to the judicial branch including not only administrative information but all information, with no bodies excluded.
- Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the information, including the obligations to inform the requester that the information is not held & to refer the requester to another institution or to transfer the request where the public authority knows where information is held.
- Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides, such as to protect a record.
- The exceptions to the right of access are consistent with international standards.
- A harm test applies to all exceptions, so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused.
- There is a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest.
- Information must be released as soon as an exception ceases to apply, for example, after a contract tender process decision has been taken, & whether the law contains a clause stating that exceptions to protect public interests do not apply to information over 20 years old.
- There are clear and appropriate procedures in place for consulting with third parties who provided information which is the subject of a request on a confidential basis, provided that third parties do not have veto power over the



release of information.

- There is a severability clause so that where only part of a record is covered by an exception the remainder must be disclosed.
- When refusing to provide access to information, public authorities must state the exact legal grounds & reason(s) for the refusal & inform the applicant of the relevant appeals procedures.
- Where it is mandatory to lodge an internal appeal, e.g. to a higher authority within the public authority that first refused access or otherwise failed to comply with the law, before proceeding to an external appeal, the process is simple, free of charge & completed within clear timelines of 20 working days or less.
- Requesters have the right to lodge an external appeal with an independent administrative oversight body, such as an information commission.
- The appeal, both internal & external, is free of charge & does not require a lawyer.
- The grounds for external appeals are broad, including not only appeals against refusals to provide information, but also refusals to provide the requested form, administrative silence & other breach of timelines, charging excessive fees, etc.
- Clear procedures, including timelines, are in place for dealing with external appeals.
- In the appeal process, the government bears the burden of demonstrating that it did not operate in breach of the rules.
- The independent oversight body has the necessary mandate & power to perform its functions; including reviewing classified documents and inspecting the premises of public bodies.
- The decisions of the independent oversight body are binding.
- In deciding an appeal, the independent oversight body has the power to order appropriate remedies for the requester, including the declassification of information.
- The independent oversight body may impose appropriate structural solutions on the public authority, such as order training or better records management.
- Member(s) of the oversight body are appointed in a manner that protects it

against political interference & have security of tenure so they are protected against arbitrary dismissal, whether procedurally or substantively, once appointed.

- The oversight body reports to and has its budget approved by the parliament, or other effective mechanisms in place to protect its financial independence.
- There are prohibitions on politically connected individuals from being appointed to this body and/or requirements of professional expertise for members.
- Requesters have a right to lodge a judicial appeal in addition to an appeal to an independent oversight body.
- Sanctions may be imposed on those who wilfully act to undermine the right to information, including through the unauthorised destruction of information.
- There is a system for redressing the problem of public authorities which systematically fail to disclose information or underperform, either through imposing sanctions on them or requiring remedial actions of them.
- The independent oversight body and its staff are granted legal immunity for acts taken in pursuit of their mandate and others are granted similar immunity for releasing information pursuant to the RTI Law?
- There are legal protections against imposing sanctions on those who, in good faith, release information which discloses wrongdoing, i.e. whistleblowers.
- Public authorities are required to appoint dedicated officials in the form of information officers or units with a responsibility for ensuring that they comply with their information disclosure obligations.
- A central body, such as an information commission(er) or government department, is given overall responsibility to promote the right to information.
- Public awareness-raising efforts such as producing a guide for the public are required to be undertaken by law.
- A system is in place whereby minimum standards regarding information management are set and applied.
- Public authorities are required to create and update lists or registers of the documents in their possession to make these public.

- Training programmes for officials are required and/or are to be put in place.
- Public authorities are required to report annually on the actions they have taken to implement their disclosure obligations, including statistics on requests received & how they were dealt with.
- Central body, such as an information commission(er) or government department, has an obligation to present a consolidated report to the legislature on implementation of the law.

#### **Question 4**

Are there other indicators the participants believe are not covered in the above list?

## **SESSION 5**

### Understanding FOI Features

#### **Overview**

This session introduces participants to key features found in the FOI Act 2011 without going into detail. An in-depth analysis of the different features will be seen in other sessions. It identifies the penalties for denial of access to information; the sort of information public institutions should give out as best practice and the tools to exert compliance from public institutions.

By the end of the session, participants should be able to:

- Explain the key features of the Act
- Understand the role of whistleblowers

**(Duration 50 - 60 Minutes)**

#### **Lesson 5.1: Fundamentals to Access Information**

#### **Exercise 8**

The facilitator divides participants into groups and identify different groups to discuss on the following for 5 minutes:

- ? A list of all format in which information be accessed
- ? What sort of information do you think a public institution should not give out

Each group will make a presentation and paste its presentation on a wall for all to read.

#### **Modes of Accessing Information**

There are two main ways of accessing information under the Act and they are:

- 1) Proactive Publication:** The proactive publication of information, records, data held by public institutions. To access information under proactive disclosure, the act states that all public institutions are required to proactively publish certain types of information. These categories of information are to be published through print, electronic and online means. The proactive publications are also to be regularly updated or whenever any changes occur.

- 2) **Information Provided on Request:** Making a request for information encompasses most of the requirements of the Act. The Act sets out procedures for making requests for information, including how to make a request. It also sets out grounds upon which requests for information may be refused and the timeframes for responses. Applicants for information under the Act are not required to give any reason or explanation for seeking information. Indeed, the Act provides that:

*“An applicant under this Act needs not demonstrate any specific interest in the information being applied for.”*

#### **Types of Information Accessible**

The types of information covered by the Act include all records, documents and information stored in whatever form, including written, electronic, visual images, sound, audio recording, etc. They are all potentially accessible to any member of the public requesting them, unless the information is specifically exempted by the Act.

#### **Timeframe for Responses**

**Section 4 of the Act stipulates how much time a request for information made under the Act will entail. Public institution must respond to an applicant for information, including possibly providing the information or record requested within 7 days.**

There are only 2 circumstances under which this period may be extended and they are:

- If the application is for a large number of records and meeting the original time limit would unreasonably interfere with the operations of the institution;
- If consultations necessary to comply with the application cannot be reasonably completed within the original time limit.

Regardless, the extension can only be for not more than an additional 7 days and under such circumstances, the institution must notify the applicant of the extension with reasons for the extension.

#### **Exempted Information**

The Act recognizes that some types of information held by public institutions may be sensitive in nature. It therefore exempts certain categories of information from the general right of access which the Law grants to members of the public. However, where there is an overriding public interest involved, even exempted information can be disclosed.

#### **FOI Scope of Application**

The FOI Act does not affect the following information:

- Published material or material available for purchase by the public;

- Library or museum material made or acquired and preserved solely for public reference or exhibition purposes; or
- Material placed in the National Library, the National Museum or the non-public section of the National Archives on behalf of any person or organization other than a government or public institution.

This information is in public domain and can be assessed by all without citing the Law.

## **Lesson 5.2: Fundamentals for Implementation**

### **Training of Public Officials**

The Act requires every government or public institution to ensure the provision of appropriate training for its staff in two main areas, namely:

- Sensitizing the institutions staff on the public's right to access information or records held by government or public institutions, as provided for in the Act; and
- For the effective implementation of the Act.

### **Judicial Review under the FOI Act**

An applicant who is refused access to information may apply to a court to review the refusal within 30 days after the refusal or deemed to have been refused.

It is important to mention that judicial proceedings are the fixed course to take in compelling public institutions to release information.

Key attributes to note for following judicial proceedings under the Act include:

- The court can extend the period of 30 days before or after its expiration.
- The court has the power to examine any record under the control of a public institution to determine if it falls within one or more of the exemptions in the Act.
- If the court decides that it is not exempted, it can order the public institution to disclose the information to the applicant.
- Even if the information falls within one or more of the exemptions, in certain cases, the court may nonetheless order that the information be disclosed where it considers that the public interest in disclosing the information outweighs

whatever injury the disclosure would cause.

- Courts are required to deal with cases arising under the Act using summary procedures to avoid delays.
- In any court proceedings, the burden of proving that the information was rightly refused rests on the institution concerned.
- The Courts have a wide discretion to impose any conditions they deem appropriate when making an order for the disclosure of information that was denied.

### **Offences under the FOI Act**

The Act creates 2 offences:

1. The first is wrongful denial of access to information with a fine of N500, 000 ( five hundred thousand naira) as sanction.
2. The Act also makes it an offence for any officer of a public institution to wilfully destroy or falsify any records before releasing the record to any person applying for it. It prescribes a minimum of one year imprisonment for the offence.

### **Protection of Whistleblowers**

Whistleblowers are informants who expose wrong doing within an organization in the hope of stopping the illegal act. They work within the organization and are privy to certain information that is not available to the general public or all staff. It is important for the FOI Act to protect whistleblowers. It is only when this protection is guaranteed can it encourage whistleblowers to come forth with authentic information on wrongful activities without fear of reprisal.

The Act provides that no provision of the Criminal Code or the Official Secrets Act should be used against any public officer, who, without authorization, discloses to any person, any information which the whistleblower reasonably believes to show:

- A violation of any Law, rule or regulation;
- Mismanagement, gross waste of funds, fraud and abuse of authority; or
- A substantial and specific danger to public health or safety notwithstanding that such information was not disclosed pursuant to the provisions of the Act.

The Act also prohibits any civil or criminal proceedings against any person for receiving such information or for further disclosing it.

### **Role of the Oversight Body**

The Attorney-General of the Federation has broad oversight over all public institutions under the Act. This role encompasses:

- Ensuring that all institutions to which the Act applies comply with the provisions of the Act.
- The Attorney-General is required to submit annual reports to the National Assembly on how the Law is being implemented and complied with.
- The Attorney-General is required to submit his or her annual report to the National Assembly on or before April 1 of each calendar year.
- The Attorney-General's report must include for the previous calendar year a listing of the number of cases arising under the Act, the exemption involved in each case, the disposition of such cases, and the cost, fees, and penalties assessed.
- The Attorney-General's report must also include a detailed description of the efforts taken by the Ministry of Justice to encourage all government or public institutions to comply with the Act.
- The Attorney-General is required to develop reporting and performance guidelines for all public institutions for their own reports on the implementation of the Law as required by the Act.

### **Reporting by Public Institutions**

The Act states that all public institutions are required to submit annual reports to the Attorney-General of the Federation on or before February 1 of each year. Each public institution is also required to make its report publicly available by different means, including by telecommunications, computer and other electronic means.

Each public institution's report must include:

- The number of decisions made by the institution not to comply with applications for information made to such institution and the reasons for such decisions;
- The number of appeals made by persons under the Act and the reason for the action upon each appeal that results in a denial of information;
- Whether a court has upheld the decision of the institution to withhold information and a concise description of the scope of any information withheld;
- The number of applications for information pending before the institution as at

October 31 of the previous year and the average number of days that such application had been pending before the institution as at that date;

- the number of applications for information received by the institution and the number of applications which the institution processed;
- The average number of days taken by the institution to process different types of application for information;
- The total amount of fees collected by the institution to process such applications; and
- The number of full-time staff of the institution devoted to processing applications for information, and the total amount expended by the institution for processing such applications.

#### Cost of Access to Information

Access to records and documents is not free of charge. The fees is limited to standard charges for the duplication of documents and for where it is necessary, to transcribe the information.

**SCHEDULE**  
**RANGE OF FEES CHARGEABLE FOR DUPLICATION OF RECORDS**  
**UNDER THE FOIA 2011**

PHOTOCOPY	MAXIMUM OF N10 PER PAGE
SCANNING TO FILE	NIL
SCANNING AND PRINTING	MAXIMUM OF N10 PER PAGE
COPYING TO COMPACT DISK (If CD Is Provided By The Public Institution)	N100 PER CD
COPYING TO USB DRIVES (If Supplied By Public Institution)	N1, 500 (1GB OR LESS); N2, 500 (1GB – 2.5 GB) N5000 (OTHERS)

*\*\*Fees scheduled issued in the Guidelines on The Implementation Of  
The Freedom of Information Act 2011 Revised Edition 2013 by the Attorney General of the Federation*

#### **Exercise 9**

Participants should engage with the facilitator on the following:

- ? Identify potential whistleblower amongst family and friends
- ? What institutions does the identified persons work for
- ? What sort of information does the whistle blower have access
- ? What will the participant do with the information

The exercise aims to link the relationship between a whistleblower and effectiveness of meeting organisational goals.

## SESSION 6

### Exempted Information under the FOI Act

#### **Overview**

This session identifies the area of restrictions for the FOI Act. The Law lists out information of which access to information is limited due its sensitive nature. The session will go on to explain that regardless of these limitations, the FOI Act can always receive information.

By the end of the session, participants should be able to:

- Identify exempted information
- Have an in-depth understanding of the restriction
- Recognize how to use the FOI Act over the limitations

(Duration: 45 - 55Minutes)

#### **Lesson 6.1: Exempted Information Simplified**

#### **The Principle of Maximum Disclosure**

The FOI Act is founded on the principle of maximum disclosure. It is therefore a presumption that all information held by public institutions should be subject to disclosure and that information may be withheld only in very limited circumstances. These limited circumstances are the exemptions from the general right of access to information under the Act.

#### **Exemptions under the FOI Act**

The Act recognizes that some types of information held by public institutions may be sensitive for a variety of reasons. It therefore exempts some categories of information from the general right of access which the Law grants to the public.

However, in most of the cases, the exemptions are not absolute and where there is an overriding public interest involved, even exempted information can be disclosed.

The Law lists out the kind of information which are exempted from accessibility. They are:

- 1. Information which may be injurious to the conduct of international affairs or the defence of Nigeria**

Information whose disclosure may be injurious to the conduct of international affairs and the defence of Nigeria is exempted (S.11 (1)). Such information must however be disclosed where the public interest in disclosing it outweighs whatever injury the disclosure might cause (S.11 (2)).

## **2. Information which may jeopardize Law enforcement activities or investigations or the right to a fair trial**

Information compiled by any Law enforcement or correctional agency for Law enforcement purposes or for the internal matters of a public institution, whose disclosure would or could:

- Interfere with pending, actual or reasonably contemplated Law enforcement proceedings conducted by any Law enforcement or correctional agency;
- Interfere with pending administrative enforcement proceedings conducted by any public institution;
- Deprive a person of a fair trial;
- Disclose the identity of a confidential source;
- Constitute an invasion of personal privacy under Act;
- Obstruct an ongoing criminal investigation;
- Reasonably be expected to be injurious to the security of penal institutions;
- Reasonably be expected to facilitate the commission of a crime.

However, such information must be disclosed where the public interest in disclosing it outweighs whatever injury the disclosure might cause. (S.12(1))

## **3. Personal Information**

Files or materials that contain personal information about clients, patients, residents, students, or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from the public institutions, are exempted.

Also exempted are:

- Personnel files and information about employees, appointees or elected officials of any public institution or applicants for such positions;
- Files and personal information maintained about any applicant, registrant or license by any public institution cooperating with or engaged in professional or occupational registration, or discipline;
- Information required of any tax payer for the assessment or collection of any tax unless its disclosure is otherwise required by Law; and
- Information revealing the identity of persons who file complaints or provide information to administrative, investigative, Law enforcement or penal agencies on the commission of any crime. (S.14(1))

It is significant to note that a public institution must disclose any material

containing personal information in any of the following circumstances:

- If the individual to whom it relates consents to the disclosure. (S.14(2))
- If the information is already publicly available. (S.14(2))
- Where the disclosure clearly outweighs the protection of the privacy of the individual. (S.14(3))

## **4. Information containing trade secrets, commercial or financial information that are proprietary, privileged or confidential**

Information that contains trade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of the information may cause harm to the interests of the third party are exempted.

However, the third party can consent to the disclosure, in which case the information must be disclosed.

Also exempted is information whose disclosure could reasonably be expected to interfere with the contractual or other negotiations of a third party; proposal and bids for any contract, grants, or agreement, including information which if it were disclosed would frustrate a procurement or give advantage to another person. (S.15(1))

## **5. Information subject to professional privilege**

This refers to Information that is subject to:

- Legal Practitioner-client privilege;
- Health Worker-client privilege;
- Journalism confidentiality privileges; and
- Any other professional privileges conferred by the Act are exempted. (S.16)

## **6. Information containing research materials by an academic institution**

Information containing course or research materials prepared by faculty members of an academic institution is exempted. (S.17)

## **7. Information containing examination data**

Materials that contain information on test questions, scoring keys and other examination data used to administer an academic examination or to determine the qualifications of an applicant for a license or employment are exempted. (S.19(1))

## **8. Information containing architectural plans**

Materials containing architects' and engineers' plans for buildings not constructed in whole or in part with public funds are exempted.

Also exempted are materials containing architect's and engineers' plans for buildings constructed with public funds where the disclosure would compromise security. (S.19(1))

**9. Information containing library circulation**

Materials containing library circulation and other records identifying library users with specific materials are exempted. (S.19(1))

However, even where the information requested falls within any of these categories contained in Section 19(1), the application must not be denied if the public interest in disclosing the information outweighs whatever injury that disclosure might cause. (S.19(2))

**Question 6**

Between November 2009 and May 2010, Late President Yar'adua was flown out of state to receive medical treatment from which he ultimately died. Prior to his death, the machineries of state were crippled and the Nigerian populace demanded to know the state of health of their president. Under the discussed exemptions, do you think the information should be released since it is personal information?

**Exercise 10**

Use a tape and draw a huge box on the wall or on the floor. All participants should list out certain information that they require or desire. The participants will then read out each of the question and unanimously agree if the information requested is 'exempted', 'not exempted'. 'Exempted but with an overlying public interest'

Exempted	Not Exempted	Exempted but with an overlying public interest



## SESSION 7

### Proactive Disclosure

#### Overview

As mentioned in Session 2, there are two ways to access information from public bodies. One of the identified ways is by proactive disclosure. This session explains what proactive disclosure entails and what sort of information public institutions are obligated to freely provide.

At the end of this session, participants will be able to:

- List the information all public institutions should disclose
- Understand the benefit of proactive disclosure
- Identify the mediums of access the information

(Duration: 30 - 45 Minutes)

#### **Lesson 7.1: Role of Public Institutions to Proactive Disclosure**

#### **Access to Public Information**

The FOI Act primary function is to provide and regulate the procedures and processes by which members of the public can request information from public institutions. The right of members of the public to submit requests and receive the information is the most well-known feature of FOI Laws.

The major way by which the public can access public information is when information is made available to the public on the initiative of the public institutions themselves, without anyone submitting a request for the information. This practice is known as proactive disclosure.

Many Freedom of Information Laws around the world place an obligation on public authorities and institutions to publish, on an automatic or proactive basis, a range of information that are of public importance. Modern FOI Laws now contain very extensive provisions imposing proactive publication obligations on public institutions with guidelines for their implementation.

When such information is provided and disseminated it:

- Ensures that the public are aware of the sort of information in the public institution which aids applicants in making proper FOI request to the right offices.

- Reduces the number of request for information the public institution receives since most of the information can be located in public domain.

#### **Best Practice in Proactive Disclosure**

Some of the international best practice features of the regime of proactive disclosure are:

- Ensuring that information that is of great public interest is published
- Updating the information regularly to ensure that it is always accurate and reliable at any point in time.
- Ensuring that the information reaches those who may need it.
- Ensuring that the information is understandable for people in a local community.
- Progressively increasing the scope of information that are subject to proactive disclosure over time.

#### **Key Points in Proactive Disclosure**

The FOI Act 2011 requires public institutions to proactively publish certain types of information even without anyone requesting them. – S. 2(3). It also stipulates that:

- These should be widely disseminated and made available to the public through various means, including electronic, print and online channels and at the organization's offices. – S. 2(4).
- Every public institution is also required to review and update this information periodically and whenever any changes occur - S. 2(5).
- Every member of the public has a right under the Act to institute proceedings before a court to compel any public institution to comply with these requirements, if it is in default. – S. 2(6)

#### **Every public institution covered by the Act, is required to publish the following information proactively:**

- A description of the organization and its responsibilities, including details of the programmes and functions of each division, branch and department;
- A list of all classes of records under its control in sufficient detail to facilitate the exercise of the right to information.
- A list of all manuals used by its employees in administering or carrying out any of its programmes or activities;
- A description of documents containing final opinions including concurring and dissenting opinions as well as orders made in the adjudication of cases;
- Documents containing its substantive rules;
- Documents containing statements and interpretations of policy which it has adopted.
- Documents containing final planning policies, recommendations and decisions;
- Documents containing factual reports, inspection reports and studies, whether prepared by or for the institution;

- Documents containing information relating to the receipt or expenditure of public or other funds of the institution;
- Documents containing the names, salaries and titles and dates of employment of all employees and officers of the institution;
- Documents containing the rights of the state, public institutions, or of any private person(s);
- Documents containing the name of every official and the final records of voting in all proceedings of the institution;
- A list of files containing applications for any contract, permits, grants, licenses or agreement;
- A list of reports, documents, studies, or publications prepared by independent contractors for the institution;
- A list of materials containing information relating to any grant or contract made by or between the institution and another public institution or private organization; and

The title and address of the appropriate officer of the institution to whom an application for information under the Act should be sent.

## Lesson 7.2: Proactive Disclosure as a Tool for Good Governance

### Benefits of Proactive Disclosure

There are many benefits of proactive disclosure, both for public institutions which take the initiative to publish the information they hold and the public.

**Public Policy:** From a public policy perspective, which aims at ensuring better governance, the benefits of proactive disclosure for governments and public institutions include:

- Proactive disclosure ensures that members of the public are appropriately informed about Laws, policies and decisions that affect them.
- The proactive disclosure of data, policy documents and other types of information ensures that members of the public have the information they need to participate in policy and decision-making.
- The proactive dissemination by public institutions of information about how they operate and what they do helps the public access government services.
- Proactive disclosure encourages better information management within public institutions as it improves the institution's internal information flows, and thereby contributes to increased efficiency.
- Proactive disclosure ensures more accountable use of public funds and helps to promote integrity in government.
- Proactive disclosure also reduces the burden on public institutions of having to process numerous individual requests for information filed under the FOI Law.

**Public Benefit:** From the point of view of members of the public, the benefits of

proactive disclosure also include:

- The automatic availability of information ensures that the public has timely access to information
- Proactive disclosure also helps to ensure that there is equal access for all members of the public without the need for anyone to file requests.
- Proactive disclosure helps to ensure that all citizens can access at least a minimum amount of information about public institutions, including the vast majority of citizens who may never submit an FOI request.
- Where a proactive disclosure regime is functioning properly and relevant information are automatically disclosed in real-time, it becomes difficult for public officials to later deny the existence of any particular information or to manipulate information.
- Proactive disclosure enhances security for members of the public seeking information relating to specific issues, institutions or groups, as it makes it possible for people to access sensitive information anonymously. It will therefore be impossible for public officials and other powerful interests in society to identify or track members of the public who are requesting specific information.

### Exercise 11

Participants should list out all sectors and institutions that they will be interested in its proactive disclosure.

### Exercise 12

The rationale behind releasing all the above listed information, data, records is to what purpose.

## SESSION 8

### Duties and Obligations under the FOI Act

#### **Overview**

In order for any mechanism to work, there needs to be structures, rules and responsibility set in place in ensuring its effectiveness. The Act mandates all public institutions to carry out certain activities in fostering a true FOI regime. In order to increase the implementation of the Law, there are laid down rules and activities that need to be carried out. This session explains what those rules are for Public institutions in carrying out their responsibilities under the Law.

At the end of this session, participants will be able to:

- Identify the rules set by the FOI Law to public institutions
- Understand how it promotes access to information regime

(Duration: 20 - 30 Minutes)

#### **Lesson 8.1: Public Institutions Responsibility**

#### **Obligations of Public Institutions**

All public institutions have certain obligations under the Act. While some of these obligations are clearly stated by the Act, others are not specifically mandated by the Act but will be necessary for the institutions to process requests for information efficiently and to comply fully with the provisions of the Act.

- a) Record Keeping:** Every public institution must ensure that it records and keeps information about all its activities, personnel, operations, businesses and other relevant or related information or record S.2(1) and 9(1). Public institution must also ensure the proper organization and maintenance of all information in its custody in a manner that facilitates public access to such information. S. 2(2) and 9(2)
- b) Designation of an FOI Desk Officer:** Every public institution is required by the Act to designate an officer to be in charge of requests from members of the public for access to information. They are also required to publish the title and address of the appropriate officer to whom applications for information under the Act should be sent. - S. 2(3)(f)

In addition, the Attorney-General of the Federation (AGF) and Minister of

Justice issued the *Guidelines On The Implementation Of The Freedom Of Information Act 2011 Revised Edition 2013* to all public institutions on compliance with their duties and obligations under the Act.

- c) **Training of Officials:** Every public institution must ensure the provision of appropriate training for its officials
- d) **Handling of Oral Application:** An official to whom an applicant makes an oral application for information is required to reduce the application into writing. The official should also give a copy of the written application to the person who made the oral application. - S. 3(4). This is more so for persons with disabilities, illiteracy or language barrier.
- e) **Establishment of Procedures:** Although not specifically mandated by the Act, public institutions ought to establish basic rules and procedures for submission of requests for information and for giving out responses to facilitate its smooth operation.

Such rules should include a requirement that the responsible officer registers every application for information and issues acknowledgment receipts to the applicant for every application. The AGF suggested in his 2013 Guidelines on the implementation of the FOI Act a number of measures to facilitate the receipt and processing of requests for information one of which is that public institution should assign a tracking number to each request and provide that tracking number to the person making the request. It also says:

*“Where the application is submitted by the applicant personally an acknowledgment should be given to the Applicant and a registry record created for the application. For other methods, the acknowledgment and tracking number must be sent to the e-mail or postal address of the applicant”*

- f) **Giving Proper Notification:** Where a public institution decides to deny an application for information, it must:
  - Give a written notice to the applicant stating that access to all or part of the information will not be granted, with reasons for the denial and the section of the Act relied upon for the denial of access.
  - The notice must also state that the application has a right to challenge the refusal in court.
  - The notice must contain the names, designation and signature of each person responsible for the denial of access to information.
  - A public institution refusing an application for access to information must also indicate in the notice whether the information or record applied for actually exists.
  - A public institution which receives an applicant but considers that another public institution has greater interest in the information, may within 3 days but not later than 7 days after receiving the application,

transfer the application and if necessary, the information, to the other institution. In such a case, the institution must give a written notice of the transfer to the applicant.

**Annual Reports:** Each public institution must submit to the AGF by February 1 of every year, a report on the usage of the Act covering the previous fiscal year. Each public institution must make the report available to the public by different means, including by telecommunication and computer, or if computer and telecommunications means have not been established by the institution, by other electronic means.

## Lesson 8.2: The Attorney General of the Federation Responsibility

### The AGF obligation

The AGF is required to make each report, which has been submitted to him by every public institution, available to the public. The reports should be made available in hard copies, online and also at a single electronic access point.

The AGF is also obligated to carry out the following:

- Required to develop reporting and performance guidelines for public institutions for the reports required under the Act.
- Establish requirements for the reports as he or she decides may be useful.
- Ensure that all institutions to which the Act applies comply with the provisions of the Act.
- Required to develop reporting and performance guidelines for public institutions for the reports required under the Act.
- Establish additional requirements for the reports as he or she decides may be useful.

### The National Assembly obligation

Though the AGF is the primary oversight body for FOI, the National Assembly also plays an oversight role. The AGF must notify:

- the Chairman and ranking minority member of the Committee on Government Reform Oversight of the House of Representatives and
- the Chairman and ranking minority member of the Committees on Government Affairs and the Judiciary of the Senate, by April of the year in which the report is issued of the existence of the annual report and make it available to them in hard copies as well as by electronic means.

As identified in Section 29 (7) of the FOI Act, the AGF will also submit an annual report to the National Assembly on or before April 1 of each calendar year which shall include:

- A listing of the number of cases arising under this Act, the disposition of such cases and its cost, fees and penalties assessed.
- A report detailing a description of the efforts taken by the Ministry of Justice to encourage all public institutions to comply with this Act.

### **Question 7**

Some have argued that a weak point of Nigeria FOI Act is the fact that the oversight body is vested in the Attorney General of the Federation as against creating a separate public institution e.g. an information commissioner which will be an independent body. Does this argument weaken the Law?

## **SESSION 9**

### **Enforcing Compliance under the FOI Act**

#### **Overview**

**For any Law to work, it needs to be enforceable and enforced.** The same is true with the FOI Act. This session explains what those mechanisms are in ensuring public bodies compliance with the Law.

**At the end of this session, participants will be able to:**

- **Identify the procedures for enforcing compliance**
- **Understand the penalties for wrongful denial of access to information**

**(Duration: 15 - 20 Minutes)**

#### **Lesson 9.1: Rooms for Recourse to Enforce Compliance**

#### **Ensuring Compliance**

For an FOI regime to be effective there should be mechanisms by which compliance is monitored and enforced while non-compliance is sanctioned. The FOI Act has no specific mechanism for monitoring compliance with the proactive disclosure requirements of the Act. The Act also contains no sanctions for non-compliance with the proactive disclosure requirements.

The case is different under requesting for information. Section 2(6) gives every person entitled to the right of access under the Act the right to institute proceedings in the court to compel any public institution to comply with its proactive publication obligations.

#### **Judicial Review**

The Act provides that an applicant who is refused access has a right to go to court to review the refusal within 30 days after he or she is refused access to the information or is deemed to have been refused.

The courts have the power to examine any record under the control of a public institution to which an applicant has been denied access to determine if it falls within more of the exemptions in the Act. If the court decides that the information is not exempted, it can order the public institution to disclose the information to the applicant.

Even if the information falls within one or more of the exemptions, in certain cases, the court may nonetheless order that the information be disclosed where it considers that the public interest in disclosing the information outweighs whatever injury the disclosure would cause.

Courts are required to deal with cases arising under the Act using summary procedures to avoid delays. In any court case, the burden of proving that an application for information was rightly denied rests on the public institution. The Courts have a wide discretion to impose any conditions they deem appropriate when making an order for the disclosure of information that was denied.

The Act creates two offences, each of which attracts a different sanction.

- **The first offence is wrongful denial of access to information:** Where a case of wrongful denial of access to information is established, the defaulting official or institution commits an offence. The offence carries a N500,000 fine, on conviction.
- **The second offence is the wilful destruction or falsification of record:** This refers to intentionally altering and destroying any record by any officer of a public institution before releasing it to any person applying for it. This offence carries minimum term of one year imprisonment on conviction. There is no option of fine for this offence.

### **Media Support**

The truth of the matter is most individuals will not want to go to the courts to enforce their right under this Law. Most people who would take that option are legal practitioners and those who have access to legal officers.

It has been noted as best practice internationally that in a situation where making access to information, using the media is an effective way to move compliance by the public institution. This throws light on an otherwise secretive issue. Though such route is not covered in the FOI Act but it is noted as also an effective means to enforce compliance.

### **Administrative Support**

In case of access denial to information, it would be advisable for such applicants to first explore various administrative mechanisms before exercising the litigation option, in view of the cost and uncertainty involved in judicial processes.

An administrative option could be to lodge a complaint at the SERVICOM desk responsible for or attached to the public institution, where this is applicable. Other options could be to approach the National Human Right Commission (NHRC) and the Public Complaints Commission (PCC).

SERVICOM desks do not really have any enforcement powers, but they may be able to intercede on behalf of applicant denied information. NHRC and PCC are institutions with the mandate to protect and assist citizens whose rights have been violated. Their offices can be found round the country and have the power under their enabling laws to intervene on behalf of citizens who are denied their rights, including of access to information and to institute legal proceedings in court to vindicate the rights of such citizens, should the need arise.

### **Question 8**

How can regular citizens of a state access the media? Through social media, editorial comments and letters to the editor, partnership with civil society groups etc.

## SESSION 10

### Using the FOI Act

#### **Overview**

Previous sessions in this manual have discussed the principles and context of the FOI Law. It explains the statues, obligations and routes for compliance. This session will point out the practicality of the Law and how to circumvent the challenges.

#### **At the end of this session, participants will be able to:**

- Understand the elements of an FOI application
- Understand Public Institutions' requirements by the Law
- Use the 2013 AGF Revised Guidelines to follow up on request for information

**(Duration: 50 - 90 Minutes)**

#### **Lesson 10.1: Refresher Exercise**

##### **1. Who can make request for information?**

Every person has a legally enforceable right of access to records, documents and information held by public institutions. The right which can be enjoyed by Nigerian citizens and non-citizens alike can be exercised by people resident in Nigeria and those residents outside Nigeria.

##### **2. What sort of information can be accessed under the Act?**

The types of information covered by the Act and which can be accessed under the Act include all records, documents and information stored in whatever form, including written, electronic, visual images, sound, audio recording, etc.

##### **3. What Institutions/Bodies can be approached for Information?**

Any information, record or document, in any form, can be accessed from any particular public institution covered by the Act or any private entity to which the Act applies. The AGF in its guidelines under section 1:1 states:

*“The FOIA applies to all public Institutions. In view of sections 2(7), 29(9) and 31 of the FOIA this means any:  
(a) Legislative, executive, judicial, administrative or advisory body of*

the Government including boards, committees or commissions of the State;

(b) Any subsidiary body of those bodies including but not limited to committees and sub-committees which are supported in whole or in part by public fund or which expends public fund;

(c) All companies in which the Government has a controlling interest and

(d) Private bodies providing public services, performing public functions or utilizing public funds.”

## Lesson 10. 2: Using the AGF Revised Guideline

### Guidelines on the Implementation of the Freedom of Information Act 2011 Revised Edition 2013

Going through the FOI Act shows that it does not state the details that should be contained in an application for information. The AGF is mandated under the Law to provide guideline for members of the public on how to request for information.

The AGF Guidelines 2013 provide very liberal and expansive procedures for applying for information, records and documents.

Section 1.5 of the Guideline stipulates that:

*“There is a difference between an application under the FOIA and routine correspondence. Any request for information that can be provided without any question – such as recruitment brochures, leaflets, press releases and the text of public speeches – should be treated as normal and routine correspondence. In general, requests between Public Institutions are not FOIA requests. On the other hand, any application for information or record that needs to be actively or seriously considered should be formally treated as an application under the Act especially if it seems likely that the requested information may not be disclosed. Accordingly, such application should be formally recorded, and treated as an application under the FOIA.”*

The Guidelines however, provide further in Section 1.8:

*“An application under the FOIA will generally be made in writing although this is not required under the Act. However, Illiterate or physically challenged (disabled) persons can still apply for information under the Act by making an oral application for information to any public institution. The Act provides that authorized officers of a public institution must assist such applicants by transcribing such oral applications into written form and making a copy of such written application available to the applicant. It is advised that in such cases the FOIA Official should ensure that the transcription is read over to the applicant, and a statement is made on the application to the effect that - the Application has been read to the*

*applicant and the applicant is satisfied that it is a true and accurate representation of the Oral FOI Application”.*

In Section 1.9 of the Guideline states:

*“Written applications may be transmitted electronically (email), by courier, post or delivery in person. To facilitate requests made via email, public institutions are advised to dedicate an email address which should be adequately publicised and should be configured to automatically generate an acknowledgment/receipt of the request.”*

The Act states that application for information, records or documents should be addressed and sent to the FOI Officer of the public institution, who is the person designated by the public institution under the Act to receive such requests from members of the public.

However, even if the institution has not designated an FOI Officer, this does not affect your right of access to information, records or documents.

Under Section 1.16.1 of the Guideline, it states that all public institutions should consider designating a senior official (at the Assistant Director level or its equivalent) or establishing an FOI Unit with direct responsibility for determinations and compliance with the Act.

## Lesson 10. 3: How to Write an FOI Request Letter

### Requesting for Information

In ensuring that a request for application is answered it is important to adopt some key points which are:

- Clearly state in an application for information that you are applying under the FOI Act. It is important to note that an application is still valid even if this is not stated in the application that the request is made under the FOI Act as noted above in Section 1.5 of The Guidelines. But by stating clearly that you are applying under the FOI Act, you remove any room for doubt in the event of any dispute later on. This is important because:
  - Section 30(2) of the Act provides that:

*“Where the question whether any public record or information is to be made available, where that question arises under this Act, the question shall be determined in accordance with the provision stated herein, unless otherwise exempted by this Act.”*

By making it clear that you are applying for information under the Act,



any dispute over your right of access to information will have to be resolved in accordance with the provisions of the Act.

- There are other Laws like the Public Procurement Act (PPA) 2007; the Nigeria Extractive Industries Transparency Initiative Act (NEITI) 2007, etc. which also have information disclosure clauses but their procedures and enforcement mechanism are not as clear and as strong as those in the FOI Act.
- \* The FOI Act is explicitly made superior to secrecy Laws such as the Official Secrets Act, the Criminal Code, the Penal Code, the Federal Public Service Rules, etc.  
The FOI Act gives you a stronger right of access to information than these other Laws. By stating that you are applying under the FOI Act, you can take advantage of the strong enforcement mechanism and sanctions for wrongful denial of access under the FOI Act.
- Include the name, address and other contact details of the applicant as would be included in any normal official correspondence in the application.
- When making a request, the application should contain sufficient detail to enable the public institution identify the record, document or information being requested.
- The request for information should be simple and straightforward.
- You should include any, some or all of the following, if you have the information:
  - The title of the document or record.
  - The date on which the document or record was issued or made.
  - The reference number of the document.
  - The name of the author of the document.
  - The file number of the record.

Examples of ways in which you could describe the document, record or information that you want could include any of the following:

- *“I request a copy of the minutes of meetings of the Procurement Planning Committee of the Ministry of Global Affairs, held on May 28, 2011, at which a decision was taken to purchase 250 laptop computers for senior officers of the Ministry.”*
- *“I request copies of all correspondence, including emails, between officials of the Ministry of Information and Blue Skies International,*

*from January 1, 2011 and June 30, 2011, leading to the signing of the Memorandum of Understanding between the Ministry and the company, dated July 1, 2011.”*

- *“I request a list of all the applications for building plan approvals granted by the Ministry of Urban Planning between May 29, 2007 and May 28, 2011. The list should indicate the name of the applicant, the date of the application, the date the application was granted, the type of building approved and the amount paid in fees and charges by each applicant.”*
- Avoid making requests that are too broad or general such as **“I request all the information, records and documents you have on waste disposal in Lagos State.”**
- Indicate in your application the form in which you would like to be given access to the information, record or document that you are requesting. You may want to print, photocopy or just inspect the records or documents without taking copies or before taking copies. The public institution should comply with your preference as long as it is reasonable and will not damage the original record, document or information.
- You do not have to give any reason or explanation for requesting any information, record or document.
- You do not have to show that the document, record or information affects you or concerns you or is in any way connected to you.
- You have a right to apply for any information at all that is not exempted under the Act without having to demonstrate an interest in the information.
- The applicant should endeavour to follow-up the request for information by tracking the status of the request. As identified in Session 5, the AGF has directed each public institution to assign a tracking number to each request and give the tracking number to the person making the request.

### **Exercise 13**

Participants should develop FOI Applications using the information from the training. At the end of the exercise, Participants will present their letters for criticism and advice from fellow participants.

### **Exercise 14 - Role Play**

Participants should reenact a scene in making request for information putting some of the above scenarios into context. This will involve making a request, interaction with a public institution and room for seeking redress in court. Keep in mind issues like fees, tracking request and information requested. Someone will play the role of the requester, a FOI Officer and a judge.

## **SESSION 11**

### **Monitoring Compliance**

#### **Overview**

The Act is therefore relying on the public to monitor compliance with the proactive publications obligations of public institutions and to use the courts to enforce compliance.

**At the end of the session, participants will be able to identify components in implementing the FOI Act that needs to be monitored.**

**(Duration: 50 - 60 Minutes)**

#### **Lesson 11.1: Monitoring Public Institutions**

#### **Scope of Monitoring**

Public institutions have many duties and obligations under the Act as noted in session 7. These requirements are intended to ensure that the Act is effective and achieves its objectives. It is therefore imperative that the level of compliance with the requirements is monitored as compliance is critical to the effectiveness of the Act.

It will be very difficult for any individual or indeed one organization, to try monitoring public institutions all over the country.

Regardless, anyone can choose to monitor a specific area of interest. A citizen, civil society group or a Media outlet, depending on capacity and resources, may decide to limit the scope of the monitoring exercise to:

- Public institutions in the State where the monitor is based
- Public institutions in the local government area where the monitor is based
- Public institutions within a specific sector of interest and its level of government, e.g. Health sector at the federal, state or local government level.

#### **The General Public can monitor whether:**

- **The proactive publications requirements are being complied with by public institutions and in particular, whether the categories of information stipulated in the Act are being proactively published.**
- **The proactive publications are being widely disseminated and made available to public through various means, including print, electronic and online channels as well as at the offices of the public institutions.**

- **The public institutions which have carried out their proactive publications are also reviewing and updating the information periodically and whenever changes occur; and**
- **All the types of information that each public institution is required to publish proactively are actually being published.**

### Monitoring Activities

Though some of the below identified points to monitor have been discussed in previous sessions, it is crucial to direct the public's attention to specific activities which should be monitored to foster compliance. Things to monitor, include the following:

1. Their obligation to record and keep information about all their activities, personnel, operations, businesses and other relevant or related information or record as required by Sections 2(1) and 9(1) of the Act.
  - *Are public institutions are complying with this requirement?*
2. Ensuring proper organization and maintenance of all information in their custody in a manner that facilitates public access to such information as required by Sections 2(2) and 9(2) of the Act;
  - *How are the public institutions maintaining their records and information?*
  - *Can their information storage and management systems and practices enhance public access to their information?*
3. Designation of an officer to be in charge of public requests for information.
  - *Which institution have designated such officers and how available and accessible such officials in practice to members of the public seeking information?*
  - *How easy is it for members of the public to submit requests for Information to public institutions through these officers?*
  - *Are there challenges which requesters face such as not being able to get past security men at the gate or the receptionist in the institution?*
  - *What is the seniority level of such officers?*
  - *Are some categories of requesters finding it more difficult to submit than others?*
  - *Have the institutions published the titles and addresses of the appropriate officer as required by the Act?*
  - *Are the public institutions providing appropriate training for their officials on the public's right of access to information or records held by government or public institutions?*
  - *Are they also training their officials to ensure the effective implementation of the Act?*
4. One measure that can ensure efficiency is if public institutions establish some basic rules and procedures to guide the submission of requests for information and for responses to facilitate the smooth operation of the Act. Such rules may include a requirement that the responsible officer must register every application for information and issue acknowledgment receipts and tracking numbers as earlier identified to the applicant for every application.
  - *Are the training programmes appropriate or suitable?*
  - *Do the officials know what to do?*
5. The Act provides in Section 1(2) that an applicant should not be required to state any reason for requesting any information.
  - *Do public institutions ask applicants why they need the information or what their interests are?*
6. The Act provides in Section 3(4) as well as in Section 1.8 of the AGF Guideline that an official to whom an oral application is made should reduce the application into writing and give a copy to the applicant.
  - *Are officials assisting those who cannot write either by reason of illiteracy or of a physical disability, to reduce their applications into writing?*
7. The Act stipulates that public institutions must respond to applications for information within 7 days. Is this timeframe being respected?
  - *Which public institutions are complying with this timeframe and which are not?*
8. The Act provides in Section 4(b) that where a public institution decides to deny an application for information, a written notice must be given to the applicant with reasons for the denial and the section of the Act it relied upon to deny access.
  - *Is this being done?*
9. The Act recognizes that some information held by public institutions may be sensitive and therefore exempts some types of information from the general right of access which the Law grants to members of the public. These exemptions are contained in Sections 11, 12, 14, 15, 16, 17 and 19. However, the Act permits that where there is an overriding public interest involved, even exempted information should be disclosed.
  - *Are public institutions respecting these principles and requirements?*

- *How are the exemptions specified in the Act being interpreted and applied by public institutions?*
- *Is the public interest test being applied before information that may be said to be exempted is denied an applicant?*

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

- *Are the timeframes being extended by the affected institution?*
- *How often and what reasons, if any, are given for the extensions?*

11. The Act provides in Section 7(5) that where a case of wrongful denial of access is established, the defaulting officer or institution shall on conviction be liable to a fine of N500,000.

- *Is this provision being enforced?*
- *Are denials of access challenged in court?*
- *What has been the attitude of the courts where wrongful denial has been established?*

12. Section 2(3) and (4) of the Act requires every public institution to publish certain types of information proactively. These should be widely disseminated and made available to the public through various means, including print, electronic and online channels and at the offices of the institution. Every public institution is also required to review and update this information periodically and whenever any changes occur.

- *Are the proactive publications being widely disseminated and made available to public through various means, as provided in the Act?*
- *Are public institutions also reviewing and updating the information periodically and whenever changes occur?*
- *Are all the types of information they are required to publish being proactively published?*

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

- *Are the procedures being adopted by the courts in those cases such that will speed up the proceedings?*
- *How long it takes the courts to decide cases of denial of access to information?*

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

- *How are public institutions charging requesters for the information they provide?*
- *Are the charges consistent with the principles outlined in the Act?*
- *Are applicants being systematically denied access to information through exorbitant fees which they cannot pay?*

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

- *Are public officials are being sued for disclosing information, or being charged under the Criminal Code, Penal Code or Official Secrets Act for unauthorized disclosure of information;*
- *Are citizens, including journalists, being sued or charged for receiving or further disclosing information whose disclosure to them was not authorized?*

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

- *Are public institutions submitting the required information to the AGF?*
- *If so, are the submissions being made within the timeframe specified in the Act?*
- *Are the reports being made available to the public by the public institutions and the AGF in the various ways prescribed in the Act?*

17. Section 29(5) requires the AGF to develop reporting and performance guidelines for the public institutions.

- *Has the AGF developed the required reporting and performance guidelines?*

18. Section 29(6) provides that in the exercise of his oversight responsibility, the AGF must ensure that all institutions to which the Act applies comply with the provisions of the Act.

- *What steps or measures is the AGF taking or has he taken to ensure that all institutions covered by the Act comply with its provisions?*

19. Section 29(7) stipulates that the AGF must submit to the National Assembly an annual report on or before April 1 of each year.

- *Is the AGF submitting the required annual reports to the National Assembly?*
- *If so, do the reports contain the specific information required under the Act?*
- *Do the reports also contain detailed descriptions of the efforts made by the Ministry of Justice to encourage all govt or public institutions to comply with the Act*
- *Are the reports being submitted within the timeframe stipulated in the Act.*

#### **Question 10**

If you have to create your own FOI Law, what will you take out and what will you bring in?

#### **Exercise 15**

Participants should indicate ways in which they can carry out monitoring. Some of the points to be noted will be:

- a) Systematic surveys of some public bodies across the country
- b) Interviews with relevant Public Officers
- c) Website and Notice Board reviews etc

#### **Questions & Comments**

## FINAL SESSION

At the end of the last session, the facilitator should ensure that all participants should receive, fill out and return:

- a) Post workshop-test form (see annex 4)
- b) Evaluation form (see annex 5)

Other activities listed below can be done at the discretion of the facilitator or depending on the sort of training carried out. These are:

- a) Awarding Certificate of Attendance
- b) Adopting Communiqués or Resolutions

As the workshop comes to an end, the facilitator should thank all participants for their contribution and commitment to the workshop. The facilitator should also encourage the participants to:

- use the FOI Act in making request
- to contact the workshop organizers when there are challenges in implementing the FOI Act
- to step down the training received at the workshop. The step down training can be to colleagues, family members, communities, religious affiliated body and other stakeholders.

### **Essential reading**

- *FOI Act 2011*
- *PPA 2007*
- *NEITI Act 2007*
- *Fiscal Responsibility Act*

### **Annex**

## 1. AGENDA FOR A TWO – DAY WORKSHOP

### **Workshop for Representatives of Civil Society Organizations On Using the Freedom of Information Act, 2011 PROGRAMME**

#### **Day One**

<b>8.00 am - 9:00 am</b>	<b>Arrival &amp; Registration of Participants</b>
<b>9:00 am - 10:00 am</b>	<b>Opening Session (Plenary)</b> <ul style="list-style-type: none"><li>• <b>General Introductions</b></li><li>• <b>Welcome Remarks</b></li><li>• <b>Statement of Workshop Objectives</b></li><li>• <b>Overview of Workshop Programme</b></li><li>• <b>Statement and Agreement on Ground Rules</b></li></ul>
<b>10.00am – 11.30am</b>	<b>Module 1: Setting the Context (Plenary)</b> <b>What is Freedom of Information and Why is it Important?</b>
<b>10:30 am - 10:45am</b>	<b>Tea/Coffee Break</b> <b>Freedom of Information Around the World: The Global Status of the Right of Access to Information Comments, Questions &amp; Answers</b>
<b>11.30am – 1.30pm</b>	<b>-</b> <b>Module 2: Understanding the Freedom of Information Act (Plenary)</b> <b>Key Features of the Freedom of Information Act, 2011</b> <b>Proactive Disclosure Under the Freedom of Information Act</b> <b>Information Exempted from General Access Under the Freedom of Information Act</b> <b>Duties and Obligations of Public Institutions Under the Freedom of Information Act</b> <b>Comments, Questions &amp; Answers</b>

1.30pm – 2.30pm  
2.30pm – 4.00pm - **Lunch**  
**Module 3: Using the Freedom of Information Act (Plenary)**  
**Making Requests for Information Under the Freedom of Information Act**

- Who can Apply for Access to Information
- What Types of Information can be Requested
- What Institutions/Bodies can be Approached for Information
- How to Make a Request for Information
- Timelines for Responses
- Fees for Access to Information
- Types of Responses

4:00 pm - 4:15 pm  
4.15pm – 5.30pm **Comments, Questions & Answers**  
**Tea/Coffee Break**  
**Module 4: Mechanisms for Enforcing Compliance with the Freedom of Information Act (Plenary)**  
**Enforcing Compliance with the Freedom of Information Act**  
**Comments, Questions & Answers**  
5.30pm **Close of Day One**

**Day Two**  
9.00am – 9.30am **(Plenary)**  
**Review of Day One**  
9.30am – 11.30am **Brainstorming Session (Plenary)**  
**How can we Mainstream Freedom of Information in our Organization's Work?**  
[Participants briefly identify their organization's sector, the types of activities they engage in, and indicate how freedom of information can advance their work and become a core part of their work programmes]

10:30 am - 10:45am **Tea/Coffee Break**  
**How can we Sensitize and Mobilize our Beneficiaries, Constituencies and Grassroots Communities to Use the Freedom of Information Act?**  
[Participants briefly identify their target beneficiaries, constituencies and the communities where they work and suggest ways that these groups can be sensitized and mobilized to Use the Freedom of Information Act

11.30am – 12.30pm **Formulating Requests (Break-out Session)**  
**Participants to Draft Actual Requests for Information to a Public Institution or Private Entity to which the FOIA Act Applies**  
[Participants will be divided into small groups of 3 or 4, according to the sector their organizations work. Participants will be grouped with others in the same or related sectors. Working together, each of the participants drafts at least one actual request for information to be submitted to a public institution or private entity relevant to their area of work after the workshop.]

12.30am – 1.30pm **Formulating Requests for Information (Plenary)**  
(Participants present their draft requests for information which will be jointly reviewed and discussed.)

1.30pm – 2.30pm  
2.30pm – 3.30pm **Lunch**  
(Contd) Participants present their draft requests for information which will be jointly reviewed and discussed.

3.30pm – 4.00pm - **Submitting Requests for Information Under the Freedom of Information Act (Plenary)**  
**Submitting Requests for Information and Following Up**

4:00 pm - 4:15 pm - **Tea/Coffee Break**  
4.15pm – 5.30pm **Closing Session (Plenary)**

- Evaluation of Workshop
- Communiqué
- Closing Remarks

5.30pm **Close of Workshop**

## 2. REGISTRATION FORM

### REGISTRATION FORM (Generic)

NAME	SEX	ORGANISATION	DESIGNATION	ADDRESS	PHONE NUMBER	E-MAILADDRESS	SIGNATURE

## 3. PRE AND POST – WORKSHOP TEST QUESTIONNAIRE

### (SAME QUESTIONS USED FOR POST WORKSHOP TEST)

#### PRE-WORKSHOP TEST

Name: .....

Organization:.....

For each of the questions below, please underline the option you believe represents the correct answer:

1. Who can apply for information under the FOI Act?
  - a) Nigerian citizens
  - b) Any person
  - c) Adults over 18 years of age
  - d) Representatives of NGOs
  - e) Media practitioners
  
2. To whom can a request for information be made under the FOI Act?
  - a) Only Executive bodies
  - b) All public institutions
  - c) Only registered companies
  - d) Only Ministers
  - e) Only institutions awarding contracts
  
3. What kind of information can be requested under the FOI Act?
  - a) Only official letters
  - b) Only financial and contract documents
  - c) Any record, document or information stored in whatever form that is not



- exempted
  - d) Only information approved by the President
  - e) Only records, documents or information that concern you.
4. Which of these types of information may be legitimately withheld from you under the FOI Act?
- a) Information that may be embarrassing to Government
  - b) Information that the President has not approved for disclosure
  - c) Information that may be injurious to international affairs
  - d) Information that does not concern you
  - e) Information that is more than 10 years old
5. Your request for information under the FOI Act should be addressed to:
- a) The Receptionist
  - b) A specially designated officer
  - c) The Legal Adviser
  - d) The Political Adviser
  - e) The Media Adviser
6. How long should it take for you to be given the information you requested under the FOI Act?
- a) 48 Hours
  - b) 7 Days
  - c) 10 Working days
  - d) 14 Days
  - e) 30 Days
7. Which official has oversight responsibility under the FOI Act?
- a) The Minister of Information
  - b) The Attorney-General of the Federation
  - c) The President of the Senate
  - d) The Speaker of the House of Representatives
  - e) The Secretary to the Government of the Federation
8. How often should those covered by the FOI Act submit reports?
- a) Once a month
  - b) Once every six months
  - c) Once a year
  - d) Once every two years
  - e) Once every five years
9. How much should you pay to get the information that you want under the FOI Act?
- a) Any amount you can afford

- b) The cost of duplicating and transcribing the information
  - c) Any amount agreed upon
  - d) The cost of searching for the information for you
  - e) The value of the information you want
10. If you are denied access to the information you requested under the FOI Act, what can you do?
- a) Report to the Police
  - b) Challenge the refusal in court
  - c) Report to the President of the Senate
  - d) Report to the Speaker of the House of Representatives
  - e) Report to the Minister of Information
11. The FOI Act makes wrongful denial of access to information an offence and imposes a sanction of:
- a) One year imprisonment without option of fine
  - b) A fine of N5 million
  - c) A fine of N500,000
  - d) One year imprisonment and a fine of N5 million
  - e) One year imprisonment and a fine of N500,000

### 3. EVALUATION FORM

#### EVALUATION FORM

(A score of 1 is the lowest rating while a score of 10 is the highest rating)

Name (Optional): .....

Sex.....

Designation (Optional): .....

Organization (Optional): .....

How much did you know about the FOI Act before the workshop? (1 – 10)?  
.....

How much did the content of the workshop match the stated objectives (1 – 10)?  
.....

How relevant was the workshop to your current work (1 – 10)?  
.....

How much was the information you acquired new to you (1 – 10)?  
.....

How will you rate the workshop overall (1 – 10)?  
.....

What did you like most about the workshop?  
.....  
.....

What did you like least about the workshop?  
.....  
.....

How will you rate the facilitators' knowledge of the issues (1 – 10)?  
.....

How will you rate the facilitators' delivery/performance (1 – 10)?  
.....

How will you rate the venue/facilities for the workshop (1 – 10)?  
.....

How appropriate, relevant and useful were the materials provided (1 – 10)?  
.....

How will you rate the amount of time devoted to the workshop (1 – 10)?  
.....

How will you rate the organization of the workshop (1 – 10)?  
.....

What other topic(s)/session(s) would you have wished were added to the workshop programme?  
.....

How confident are you that you can now train others to use the FOI Act (1 – 10)?  
.....

What follow-up activities/actions would you recommend?:  
.....  
.....

Please suggest areas for improvements in such workshops in future  
.....  
.....

Thank you for completing this Evaluation Form

## 4. MONITORING COMPLIANCE

S/N	Questions	Scoring Instructions	Max	Score
Assessment Area: General Principles				
1	Does the FPI agree that the legal framework under the FOI Act, 2011 recognizes a fundamental right of access to information?  S1(1)	0/1		
2	Does the FPI agree that the FOI Act, 2011 creates a specific presumption in favor of access to all information held by public authorities, subject only to limited exceptions?  S1(1)	0/1		
3	Does the FPI agree that an applicant under the Act does not need to give an explanation for seeking the information? S1(2)	0/1		
4	Is the FPI aware that anyone has a right to information under this Act including non citizens of Nigeria? S1(3)	0/1		
5	Has the FPI designated an FOI Officer?	0/2		
6	Is the FOI officer known to all staff in the FPI especially security personnel and front desk officers?	0/2		
7	Does the FPI have the implementation guidelines issued by the Attorney-General of the Federation (AGF)?	0/1		
8	Does the FPI apply such guidelines?	0/2		
Sub Total				
Assessment Area: Proactive Disclosure				

9	a) Does the FPI have any publication that describes its responsibilities which include programmes and functions of each department, division or branch? S2(3a)	0/2		
	b) How is it updated? S2(3a)  <i>*Evidence</i>	0/1		
10	a) Has the FPI published a list of all classes of records? S2(3b)	0/2		
	b) How is it updated? S2(3b)	0/2		
11	a) Has the FPI published manuals used by employees in carrying out activities? 2(3b)	0/2		
	b) How is it updated?	0/2		
12	a) Has the FPI published files containing final opinions made in adjudication of cases? S2(3c)	0/1		
	b) How is it updated? S2(3c)	0/1		
13	a) Has the FPI published documents that states the rules and or policies of the FPI? S2(3d(i))	0/1		
	b) How is it updated? S2(3d(i))	0/1		
14	a) Has the FPI published documents that contains statements and interpretations of policies which have been adopted by the FPI? S2(3d(ii))	0/2		
	b) How is it updated? S2(3d(ii))	0/1		

15	a)Has the FPI published a list of all Financial receipts and expenditures that it has incurred? S2 (3d(v))	0/1		
	b) How is it updated? S2 (3d(v))	0/1		
16	a)Has the FPI published a file containing the names, salaries, titles and dates of employment for all employees? S2(3d(vi))	0/1		
	b) How is it updated? S2(3d(vi))	0/1		
17	a)Has the FPI published a file containing applications for contracts, permits, licenses or MOU and materials relating to contract made by the institution? S2(3e(i))	0/1		
	b) How is it updated? S2(3e(i))	0/1		
18	a)Has the FPI published reports made by independent contractors on behalf of the institution? S2(3e(ii))	0/1		
	b) How is it updated? S2(3e(ii))	0/1		
19	Is the information about the FOI Officer for the FPI which includes the officer's title and address widely disseminated to the public through various means? S2(3(f))  <i>*Evidence</i>	0/2		
Sub Total				
Assessment Area: Other Duties and Obligations				
20	Does the FPI have a freedom of information committee/department/unit	0/2		

21	Does the FPI have an adequate information management and record keeping system for the implementation of the Act? S2(2)	0/2		
22	Does the FPI have any policy, procedure or process made for illiterate or disabled applicants who by virtue of their illiteracy or disability are unable to make an application for access to information? S3(3) and S3(4)  <i>*Evidence</i>	No/0		
		Partially/1 Yes/2  Evidence should be in form of copies of letters or standard template made by the FPI		
23	Does the FPI give written notices to the applicants when access to all or part of the information requested are denied stating reasons for the denial, and the section of this Act under which the denial is made.  S4(b)  <i>*Evidence</i>	0/2		
24	Does the FPI give notice to an applicant within 3 days but not later than 7 days that the information requested has been transferred to another FPI which has a greater interest to the information? S5(1)	0/2		
25	Does the FPI give notices with reason for extension of time when it is unable to respond to a request for information within the specified period? S6	0/2		

26	a) Does the FPI give written notices with reason in refusing request for information? S7(1)	0/2		
	b) Does such written notices contain the names, titles, signatures of every officer that was part of the decision to refuse the request? S7(1)	0/2		
	c) Does the FPI advice requesters of the right to go to court in its notices? S7(1)	0/1		
27	Does the FPI have a regime of fees charged for FOI request?S8	0/2		
28	a)Has the FPI conducted any training for officials directly involved in the implementation of the FOI Act?	0/2		
	b) Has the FPI conducted a sensitization exercise for staff and officials of the institution? S13 <i>*Evidence (posters, circulars, notices, pictures, videos etc)</i>	0/2		
29	Does the FPI have a policy or established procedure for dealing with exemptions under the Act? S14, 15, 16,17,19	0/2		
30	Does the FPI respect the protection of whistleblowers provided under the Act? S27(1)	0/2		
Sub Total				
Assessment Area: Responsiveness				
31	Does the FPI assign tracking numbers to every FOI request and give such a number to the applicant?	0/2		
32	Does the FPI provide requesters with phone and email contacts for follow up on request?	0/2		

33	Does the FPI issue a formal acknowledgement or receipts to requesters?	0/2		
34	a)Does the FPI formally respond to every request for information that it receives?	0/2		
	b) On the average, how long does it take the FPI to respond to provide requested information?	0/2		
Sub total				
Assessment Area: Reporting				
35	How many annual reports has the FPI submitted to the AGF office since inception of the Act? S29(1)	None – 0 Once – 1 Twice - 2		
36	Are these reports made accessible to the public? S29(2)  <i>*Evidence</i>	0/2		
Sub Total				
37	In the last 12 months how many request has the FPI turned down?	Received -  Denied -  Granted -		
Grand Total				

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