

# Beaming the Searchlight

*A Manual on Using the Freedom of Information Act for Investigative Reporting*




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Information Act for Investigative  
Reporting*



**Published  
by**

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# Foreword

In a world where information is both a precious commodity and a formidable weapon, investigative journalists stand at the forefront of revealing the untold stories that can shape our society. The Freedom of Information (FOI) Act is an indispensable tool in the arsenal of journalists, empowering them to access information that gives them insights into every decision and every action of government and its institutions, thereby making them more transparent and holding them accountable for their actions.

Using the Freedom of Information Act for Investigative Reporting is a manual crafted to equip aspiring and seasoned journalists alike with the knowledge and tactics to use the FOI Act to undertake investigative reporting into virtually any issue. The manual serves as a compass, guiding journalists through the labyrinths of government or even corporate bureaucracy, helping them unveil hidden documents, expose concealed agendas, and shed light on matters that demand public scrutiny.

These pages demystify the FOI Act, helping the journalist to understand the law's nuances and to master the art and science of crafting requests for information. Journalists will gain insights into the strategic use of the FOI Act to extract information from government agencies and other institutions to which the Law applies, uncovering data that can spark groundbreaking investigations.

The Manual goes beyond mere legalities, delving into the heart of investigative journalism ethics. As the journalists wield the power of FOI Act, they will learn how to handle sensitive information responsibly, uphold journalistic integrity, and safeguard the rights of individuals whose lives may be entwined with the stories they uncover.

# Preface

Investigative reporting is based on the assumption that governments, corporate bodies and other powerful interest in the society are secretive, frequently do not tell the truth or the whole truth, and cover-up information that ordinary citizens need or ought to know. The journalist therefore goes to great lengths to find such information and to reveal it.

Such an undertaking can be difficult or even dangerous as history and experience have taught us that governments, corporate bodies and other powerful interest in the society, including criminals and criminal organizations can also go to any length to ensure that information that they do not want revealed stays hidden. There are many examples of journalists being killed, locked up, brutalized or, in many other ways, prevented from revealing such information.

The enactment of the Freedom of Information (FOI) Act in Nigeria in 2011 has removed most of the legal impediments which journalists used to face in trying to access information and records in the custody of government officials or government departments and agencies, which they require in the course of their routine reporting or as part of their investigative reporting efforts.

The Law has also neutralized the negative provisions and consequences of restrictive laws such as the Official Secrets Act, the Criminal Code, the Penal Code, and other such laws. It has overridden the secrecy clauses which pervade many laws in Nigeria and provides protection for public officers who take the initiative to release information to the media in the public interest from official reprisals.

With the enactment of the FOI Act, therefore, public information ought to become more generally available to both the media and members of the public as the Act imposes an obligation on the government, its officials, departments and agencies, to provide members of the public, including media professionals, access to documents and information in their custody.

This will obviously enhance the capacity of the media to report freely on the exercise of political power, on the management of the economy, on a variety of social issues as well as many other matters that members of the society are

interested in or ought to be made aware of. Where public officers are reluctant or refuse to disclose information or release documents that are requested by journalists or other media workers pursuant to the FOI Act, the media can ensure that they are compelled to disclose the information.

Any journalist who truly wants to carry out investigative reporting will find the FOI Act a very useful and powerful tool in digging for information in government departments and agencies and, in certain circumstances, information that are held by private entities. The Act, therefore, opens up infinitely more possibilities for resourceful and creative reporters.

This publication seeks to familiarize such journalists with the Act and how to use it. It contains valuable tips and suggestions about various ways that the Act can assist journalists in conducting investigative reporting and how they can maximize the possibilities inherent in the application of an FOI law in journalism practice.

But I doubt that the FOI Act will be of any real value or assistance to a lazy journalist who is unwilling to devote time, energy and resourcefulness to the enterprise of gathering and processing news and information. The existence or use of the Act does not eliminate the necessity for tenacity and rigorous checking of facts by a journalist. If anything, the Act imposes additional responsibilities on the media to be more accurate, factual and balanced in their reporting.

Since the excuse of having no access to information and records is no longer available to the media, journalists are increasingly going to be subjected to higher standards of accuracy, fairness and responsibility in their publications or broadcasts. The reading, viewing and listening public, to which the media is accountable, certainly have higher expectations from the media. Journalists, therefore, have to carry out more thorough research and investigation, and check their facts more rigorously before publishing.

It is our sincere hope that this publication will be a useful companion to journalists undertaking that journey.

**Edetaen Ojo**  
Executive Director, Media Rights Agenda  
March 2023



# CHAPTER ONE

## Key Features of the FOI ACT

### What is Freedom of Information?

In general, Freedom of Information refers to the right that members of the public in any society have to access information held by government officials and institutions. It is a fundamental human right established under international Law. Depending on the provision of a country's FOI law, all citizens of any country and, sometimes, all members of the public are entitled to enjoy this right. In Nigeria, any person, including non-Nigerian citizens, may exercise this right granted by the Act.

FOI Laws are known by various names in different countries, including:

- Right to Information Law (Act, Regulation, etc.)
- Freedom of Information
- Right of Access to Information
- Right to Public Records (or Documents, Information, etc.)
- Access to Information, etc.

The right to information recognizes that some types of information still need to be kept secret. The most common examples of these types of information include national security information, personal information, information relating to ongoing law enforcement investigations, sensitive commercial information or trade secrets, information relating to professional privileges such as solicitor-client privilege or doctor-patient confidentiality, among others.

But even so, there is a duty on governments to justify any refusal to disclose any information to the public where there is an overriding public interest or where the right of the public to know overrides whatever injury disclosing the information may cause.

## **Why is FOI Important?**

Information is crucial to human existence. It is critical for decision-making whether as individuals or as organizations. It is important for making various types of decisions, including:

- Personal decisions
- Professional decisions
- Business decisions
- Political decisions, etc.

The quality of decisions we make often depends on the quality of the information that we have and so, 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. If we attempt to make decisions in our ignorance, the quality of the decisions we make would probably be very poor. If we have bad information, then we would most likely make bad decisions.

It is obvious, therefore, that we cannot do without information as we have to make decisions every day of our lives.

An FOI Law is a major tool for fighting corruption - Journalists, civil society organisations (CSOs) and ordinary citizens can use the Law to expose corruption and wrongdoing.

An FOI Law enhances democratic accountability and good governance because it grants access to the information that 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 helps to improve record-keeping in public institutions as it ensures that government records are properly kept.

It enables community members know what budgetary allocations are made for maintenance or provision of facilities in their communities. This will also give them a greater sense of belonging and ownership of projects.

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.

### **Objectives of the FOI Act**

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

- To make public records 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.

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

The FOI Act establishes in very strong terms a right to information for every person.

It states 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.*” Section 1(1)

In effect, therefore, *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. It is also not subject to citizenship.

### **Record Keeping by Public Institutions**

The Act requires every public institution to ensure that it records and keeps information about all its activities, personnel, operations, businesses and other relevant or related information or records.

Every public institution is also required to ensure the proper organization and maintenance of all information in its custody in a manner that facilitates public access to such information.

The nature of government at any level is that of a bureaucracy. Almost all the discussions, decisions, actions and activities of government are routinely documented. With the requirements of Section 2(1) of the Act, which states that “A public institution shall ensure that it records and keeps information about all its activities, operations and businesses”, this is likely to be even more so.

Therefore, there is a multitude of documents and records covering a wide variety of issues, generated daily and stored by various government departments and agencies that can be potentially accessed by journalists, particularly the investigative reporter calling in aid the FOI Act. It would therefore not be an exaggeration to say that there is a harvest waiting for you out there!

### **Designation of Information Officer**

Every public institution is required by the FOI Act to designate an officer to be in charge of requests from members of the public for access to information. Every public institution is required under Section 2(3)(f) of the Act to publish the title and address of the appropriate officer to whom applications for information under the Act should be sent.

The Revised Guidelines on the Implementation of the Freedom of Information Act, 2011 issued by the Attorney General of the Federation, require each public institution to designate a senior official of at least the Assistant Director level or its equivalent as the head of its FOI Unit with direct responsibility for determinations and generally ensuring compliance with the Act.

### **Training of their Officials by Public Institutions**

Section 3(4) of the FOI Act stipulates that every public institution must ensure the provision of appropriate training for its officials on the public's right of access to information or records held by the public institutions, and for the effective implementation of the Act.

This means that all public institutions are expected to sensitize their officials to understand that members of the public have a right of access to the information or records held by the institutions and also train the relevant officials to ensure that the Act is effectively implemented.

Journalists can also play an important role in ensuring, through their reporting, that public institutions are complying with these mandatory requirements of the Act.

### **Handling of Oral Application**

Section 3(3) of the FOI Act allows illiterate or disabled applicants who by virtue of their illiteracy or disability are unable to make an application for information in writing to do so through a third party.

Section 3(4) of the Act provides that an authorized official of the institution to whom an applicant makes an oral application for information should reduce the application into writing and give a copy of the written application to the person who made the oral application.

This is further elaborated upon under Paragraph 1.4.1 of the Guidelines on the Implementation of the FOI Act, issued by the Attorney-General of the Federation (2012), which states that: “An application under the FOIA would generally be made in writing. However, Illiterate or disabled applicants can

still apply for information under the Act by making an oral application for information to any public institution. The Act provides an obligation for authorised officers of a public institution to assist such applicants by transcribing such oral applications into written form.”

## **Establishment of Procedures**

The AGF Guidelines also require public institutions to:

- Register and record every application for information to note the date it was received.
- Give an acknowledgement to the applicant where the application is submitted personally.
- Send an acknowledgement by email or post where the application is received through other means.
- Assign a tracking number to each application to ensure an accurate and complete audit trail.
- Provide that tracking number to the person making the request.

## **Timeframe for Responses**

Public institutions must respond to applications for information within 7 days, whether or not they are granting access to the information requested. There are only two circumstances when the timeframe for response provided in the Act may be extended by a further period of no more than 7 additional days.

The circumstances under which the timeframe for responses may be extended are:

- Where the application is for voluminous records and meeting the original time limit would disrupt the institution's operations;  
or
- Where consultations are necessary to comply with the application and the consultations cannot be completed within the original time limit.

## **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 FOI Act relied upon for the denial of access.

In addition, the notice must also state that the applicant 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.

## **Annual Reports**

Each public institution must submit to the Attorney-General of the Federation by February 1 of every year, a report on the usage of the Act covering the previous fiscal year. The public institutions 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.

## **Access to Annual Reports**

The Attorney-General of the Federation 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 Attorney General of the Federation 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, not later than April of the year in which the report is issued, of the existence of the report and make it available to them in hard copies as well as by electronic means.

## **Definition of Public Institution**

The FOI Act defines “Public institutions” and “Government” in three separate sections.

These are: Section 2(7); Section 29(9)(a); and Section 31.

Section 2(7) of the Act states that:

*“Public institutions are all authorities whether executive, legislative or judicial agencies, ministries, and extra-ministerial departments of the government, together with all corporations established by law and all companies in which government has a controlling interest, and private companies utilizing public funds, providing public services or performing public functions”*

Section 31 of the Act defines

*“Public Institution” as “any legislative, executive, judicial, administrative or advisory body of the Government, including boards, bureaux, 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.”*

Section 29(9)(a) of the Act states that “government” includes:

*“any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any other arm of*



***government, independent or regulatory government agency or public institution”***

## **Institutions that 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, if:

- The information, record or document was prepared or created by the institution or entity.
- The information, record or document has been used by the institution or entity.
- The information, record or document is being used by the institution or entity
- The information, record or document has been received by the institution or entity.
- The information, record or document is in the possession or custody of the institution or entity.
- The information, record or document is under the control of the institution or entity.

## **Scope of Application of the FOI Act**

The Act does not apply to:

- 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.

## **Proactive Publication**

The FOI Act requires all public institutions to proactively publish certain types of information even without anyone applying for the information.

These listed categories of information 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.

Every public institution is also required to review and update this information periodically and whenever any changes occur.

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.

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, permit, 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.

### **Information Provided on Request**

Most of the provisions of the Act deal with the provision of information on request as the Act sets out procedures for making requests for information. It also sets out grounds upon which requests for information may be refused, timeframes for responses and the procedures to be followed.

Applicants for information under the Act are not required to establish or justify their need for the information being sought.

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 under the FOI Act**

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.

In effect, therefore, the FOI Act can be used to apply for and obtain any of the following types of information:

- Paper records in the form of any written material such as books, files, letters, papers, diaries, forms, post-it notes, labels, cards, markings, personal notes scribbled in a note book or sheet of paper or other substance, computer print-outs, or any other writing that identifies or describes anything of which it is a part of or to which it is attached by any means.
- Electronic records, including information contained in or recorded or stored in any computer, disk, external drive, server, database, or any other device. These include emails, text messages, etc.
- Audio recordings contained in, recorded or stored in any tape, CD, DVD, computer, external drive, disk, voice mail, or any other device.
- Audio-visual records, including films, documentaries and similar materials contained in, recorded or stored in any tape, video, DVD, CD, computer, disk, external drive, server, or any other device.

Photographs and graphics, including maps, plans, drawings, x-rays, microfiche, microfilm, negatives, charts, graphs, images, pictures, artworks, sketches, or other visual images that can with or without the aid of some other equipment be produced or reproduced.

### **Information Exempted from Disclosure**

The FOI Act is founded on the principle of maximum disclosure, which means that there is a presumption that all information held by public institutions and other entities covered by the Act should be subject to disclosure and that this presumption may only be set aside in very limited circumstances.

These limited circumstances are the exemptions from the general right of access to information under the Act. The exemptions are based on the recognition that some types of information held by public institutions may be sensitive in nature for a variety of reasons. The Act 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. Where an overriding public interest is involved or can be established, even exempted information may be disclosed. Even in cases where it is recognized that the disclosure of the information would cause some harm, such information may nonetheless be disclosed where the public interest in disclosing the information outweighs whatever harm the disclosure would cause.

There are two broad categories of information that are exempted from the general right of access to information under the Act. The first category consists of exemptions which are somewhat absolute in that there is no public interest override applicable and as such, there are no circumstances under which such information may be disclosed. The second category consists of exemptions to which the public interest test may be applied and such information may be disclosed where there is a public interest in disclosing such information and/or where the public interest in disclosing the information outweighs whatever harm may be caused by the disclosure.

### **Exemptions without Public Interest Override**

- **Information subject to professional privilege is exempted**: Information that is subject to the following privileges:
  - Legal Practitioner-client privilege;
  - Health Workers-client privilege;
  - Journalism confidentiality privileges; and
  - Any other professional privileges conferred by an Act.(Section 16)

This exemption does not contain any public interest override.

- **Information containing research materials by an academic institution**: Information containing course or research materials prepared by faculty members. (Section 17)

This exemption is not subject to any public interest override.

### **Exemptions With Public Interest Override**

- **Information which may be injurious to the conduct of international affairs or the defence of Nigeria is exempted:** Information whose disclosure may be injurious to the conduct of international affairs and the defence of Nigeria is exempted. But such information must be disclosed where the public interest in disclosing the information outweighs whatever injury disclosure would cause.
- **Information which may jeopardize law enforcement activities or investigations or the right to a fair trial is exempted:** Information compiled by any law enforcement or correctional agency for law enforcement purposes or for 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. However, this exemption only applies in the context of an investigation that pertains to the administration or enforcement of any Act, Law or Regulation or that is authorized by or carried out in accordance with any Act, Law or Regulation;
  - 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 the Act. However, this exemption to disclosure will not apply where the interest of the public would be better served by having such record being made available;
  - 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 an offence.

However, any information applied for which falls within any of these exemptions must nonetheless not be denied where the public interest in disclosing the information outweighs whatever injury the disclosure would cause.

- **Personal Information is exempted:** Materials that contain personal information, including:
  - Files and 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;
  - 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 licensee 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 disclosure is otherwise required by Law; and
  - Information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies on the commission of any crime.

However, a public institution must disclose any material containing personal information if:

- The individual to whom the information relates consents to the disclosure; or

- The information is already publicly available.
- Where the disclosure of personal information would be of public interest and if the public interest in the disclosure clearly outweighs the protection of the privacy of the individual, the public institution to which a request for disclosure is made must disclose the information.

- **Information containing trade secrets, commercial or financial information that are proprietary, privileged or confidential is exempted:** 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. However, the third party may 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; or proposal and bids for any contract, grants, or agreement, including information which if it were disclosed would frustrate a procurement or give an advantage to any person.

However, a public institution must, regardless of Section 15(1), refuse to disclose any part of a record if that part contains the result or product of environmental testing carried out by or on behalf of a public institution.

Where a public institution discloses information, or a part of it that contains the results of a product or environmental testing, the institution must at the same time when the information or a part of it is disclosed, provide the applicant with a written explanation of the methods used in conducting the test.

A public institution must also disclose any information described in Section 15(1) if that disclosure is in the public interest relating to public health, public safety or the protection of the environment and,



if the public interest in disclosing the information clearly outweighs in importance any prejudice, financial loss or gain to the competitive position of or any interference with the contractual or other negotiation of a third party.

- **Information containing examination data, architectural plans and library circulation:** Materials that contain information on test questions, scoring keys and other examination data used to administer an academic examination or determine the qualifications of an application for a license or employment;

Also exempted are architects' and engineers' plans for buildings not constructed in whole or in part with public funds and for buildings constructed with public funds where the disclosure would compromise security; and library circulation and other records identifying library users with specific materials.

However, even where the information requested falls within any of these categories, the application must not be denied if the public interest in disclosing the information outweighs whatever injury that disclosure would cause.

### **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 he or she is refused or deemed to have been refused access to the information.

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 of the information 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.

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 two offences. The first offence is wrongful denial of access to information, which carries a penalty of a N500,000 fine.

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.

### **Reporting by Public Institutions**

All public institutions are required to submit annual reports to the Attorney-General of the Federation. The annual reports must be submitted 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.

### **The Role of the Attorney-General of the Federation**

The Attorney-General of the Federation is the official designated with oversight functions for the implementation of the FOI Act and in this capacity, exercises limited oversight over all public institutions under the Act.

Effective oversight is critical for the success of implementation of the Act as it is supposed to ensure compliance by all public institutions and other entities to which the Act applies.

In access to information laws around the world, there are different models of oversight bodies, including Information Commissioners, National Human Rights Institutions, the Ombudsman, Attorney-General, Parliaments or parliamentary committees, Monitoring Commissions, etc.

They also exercise a variety of functions and powers, including regulating public institutions and private bodies covered by the Law, receiving annual reports from bodies subject to the Law, hearing complaints and appeals arising from denial of access to information, imposing fines for non-compliance with the provisions of the Law, searching and seizing information, producing reports for submission to parliaments or parliamentary bodies, promoting awareness of the FOI Law both among public institutions and the general public and providing advice on how to strengthen the FOI law or its implementation.

Under Section 29 of the FOI Act, the Attorney-General of the Federation is charged with ensuring that all institutions to which the Act applies comply with the provisions of the Act. In addition to receiving annual reports from public institutions to which the Act applies, the Attorney-General of the Federation is also required to submit annual reports to relevant committees of the National Assembly on how the Law is being implemented and complied with.

As part of his oversight responsibilities, the Attorney General of the Federation has issued Guidelines for all public institutions on the implementation of the FOI Act.

Originally issued in 2011, the Guidelines were revised and updated early in 2013. It is called “***Guidelines on the Implementation of the Freedom of Information Act 2011, Revised Edition 2013***”. It is intended to help public

institutions understand their obligations under the FOI Act and to promote good practice in its effective implementation.

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

The FOI Act supersedes the provisions of all other Acts, Laws or Regulations, except the Constitution and those Laws entrenched in the Constitution. It supersedes the Official Secrets Act, the Evidence Act, the Criminal Code, the Penal Code, the Federal Public Service Rules, etc. None of these instruments can be used to limit the scope or application of the FOI Act.

### **Protection of Whistleblowers**

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 he 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.

### **Cost of Access to Information**

Access to information, records and documents is not free of charge so fees may be charged. But the fees that can be charged are limited to standard charges for the duplication of documents and for transcription, where it is necessary to transcribe a record. No other form of fees can be charged under the FOI Act.

In order to standardize fees across all public institutions, the AGF has established a fee schedule for accessing information under the FOI Act. The fees are contained in the revised Guidelines on the Implementation of the FOI Act. The fee schedule is titled: “***Range of Fees Chargeable for Duplication of Records under the FOIA 2011***”.

The schedule of fees recommended by the AGF are:

- The cost of photocopying records or documents is a maximum of N10 per page.
- The cost of scanning and printing documents is a maximum of N10 per page.
- There is no charge for simply scanning a record and saving it to a file in a storage device, if you are not asking for hard copies.
- The cost of copying information to a compact Disc, where the CD is provided by the public institution is a maximum of N100 per CD.
- The cost of copying information to USB drives, where the USB drive is provided by the public institution, is N1,500 for a USB of 1GB or less.
- The cost of copying information to USB drives of between 1GB and 2.5 GB is N2,500.
- The charge for copying information to USB drives of more than 2.5GB capacity is N5,000 per USB drive provided by the public institution.

The Guidelines state that where the cost of copying or transcription is negligible, the information may be provided to the applicant free of charge. It also stipulates that where it will cost the same or more to collect the fees than the amount being collected, the information may be given to the applicant free of charge.

# CHAPTER TWO

## Elements of Investigative Report

### Introduction

Investigative reporting is journalism that involves uncovering information that is previously hidden and not easily accessible. It involves in-depth research, verification, and analysis to uncover hidden truths, expose wrongdoing, and provide the public with valuable information. Investigative reporting goes beyond regular news reporting by delving into complex and often controversial topics.

The idea to go into investigative reporting may come as a result of many factors. A journalist may decide to go into investigating a story for a number of reasons which may include: enabling the public to learn the truth about matters which may have been hidden; to reveal corruption of various kinds, to unearth details of a crime that may have been committed, to expose human rights abuses; to reveal or demonstrate social justice; to shine the spotlight on cases or issues of abuse of power; to expose inappropriate relationships or the influence of such relationships in decision-making by political authorities, corporate leaders or other powerful members of society, among others.

Investigative reporting may be conducted through or enabled by personal observation, available government sources, reports by civil society organizations or actors, leaks, among several others. In an attempt to unravel an issue and get to the bottom by identifying and showing the truth of a matter, a journalist may decide to undertake investigative reporting.

The key elements of investigative reporting include, among others:

### Pursuing hypotheses

Investigative reporters often start with a hypothesis, or a theory about what they are told or believe is happening. This hypothesis can be based on a tip, a hunch, or observation of a pattern that sparks their curiosity and prompts

them to delve deeper. They thereafter gather evidence which they analyse to support or refute the hypothesis.

Investigative reporters are not supposed to reach a conclusion until they have analyzed all relevant documents/data and interviewed everyone concerned.

### **Uncovering Hidden Information**

Investigative reports are not routine news reports and they are not feature stories. They aim to reveal information that had hitherto not been disclosed to the public or is deliberately hidden.

The investigative reporter may use different methods and sources including whistleblowers or anonymous sources to access confidential data. A reporter embarking on an investigative reporting assignment must therefore ensure that he/she is not on a mission to report routine events but what was hitherto unknown.

### **Thorough Research**

Investigative reporters must invest a significant amount of time in gathering information from various sources, including reviewing public records and documents, analyzing data, and conducting interviews. They must conduct extensive research to gather evidence to support their claims. In-depth research forms the foundation of good investigative reporting.

Members of the public, policymakers, legal entities, and other stakeholders often rely on investigative reports to make informed decisions. Inaccurate or poorly researched information can lead to misinformation, erode trust, and potentially have negative consequences. Thorough research ensures that investigative reports are credible and trustworthy.

Thorough research helps the reporter to dig deep into the subject matter, uncovering facts, data, and evidence that might not be readily available or easily accessible. This can lead to revealing insights that were previously unknown. Without thorough research, the outcome may be a superficial report that will not make any impact.

Investigative reports typically involve making claims, drawing conclusions, and suggesting recommendations based on the gathered information. Without solid research to back up these claims, an investigative report might lack the necessary foundation to persuade the audience or make a compelling case.

Thorough research also helps to provide a broader context for the issue at hand. Understanding the historical, cultural, economic, and social context surrounding the subject allows the reporter to present a more comprehensive and insightful report.

Extensive research can help the reporter to identify patterns, trends, and connections that might not be apparent on the surface. This can lead to a deeper understanding of the issue and help uncover systemic problems.

Thorough research enables the reporter to anticipate potential counterarguments or criticisms. This allows the reporter to address these concerns within his/her report, making his/her analysis more robust and convincing.

An investigative report demands meticulous research to ensure accuracy, credibility, and a comprehensive understanding of the subject matter. Thorough research forms the foundation of a strong and impactful investigative story that can drive change, inform the public, and hold those in power accountable.

### **Importance of Documentary Evidence in Investigative Reporting**

Investigative reporting is quite simply the putting together of evidence to substantiate or establish a fact or hypothesis. A very important part of this process is getting documentary evidence which cannot be easily refuted as word of mouth obtained through interviews or from sources, whether confidential sources or sources speaking to you on record, can frequently prove to be inaccurate and if often easily challenged.

Public records and documents are therefore frequently critical and invaluable assets for investigative reporting.



They are important because they help you to:

Get accurate and reliable facts on any issue or event, at least to the extent that is claimed in the records or documents

Bring previously unknown facts to light in a manner that is far more reliable than the human memory as well as a higher possibility of providing a comprehensive account of an issue or event more than a source recounting from memory might be able to do.

Correctly report events that may have escaped public attention when they occurred or where the full facts were not known, incompletely or incorrectly reported.

Verify information that you may have obtained from anonymous or confidential sources or even sources who may have provided you with information on the record, etc.

## **Document Analysis**

A crucial part of investigative reporting is obtaining and analyzing official documents, legal papers, financial records, and other written materials. This helps in verifying or refuting claims and providing evidence to support the reporting.

Documents often serve as primary sources of information in investigative journalism. They can provide firsthand accounts, records, and evidence that are not subject to interpretation or bias. Analyzing documents allows journalists to access unfiltered information and draw conclusions based on the facts presented.

Documents can corroborate or refute claims made by sources, be they individuals or organizations. They provide an objective basis for fact-

checking and verifying the accuracy of statements. Document analysis helps ensure that the information being reported is reliable and truthful.

Documents can reveal hidden or undisclosed information. Investigative journalists often use techniques like FOI requests, leaked documents, or whistleblowers to access documents that shed light on secretive or controversial matters.

Investigative journalists often seek to build a case or story based on evidence. Documents, whether they are financial records, legal documents, emails, or internal communications in the form of memos, can serve as crucial evidence that supports the claims being made in the investigative report.

By analyzing a series of documents over time, investigative journalists can identify patterns, trends, or shifts in behavior. This can provide insights into systemic issues or changes within an organization or industry.

### **Interviews and Source Verification**

Investigative reporters conduct interviews with relevant individuals, witnesses, experts, and key players involved in the story. Verification of sources is critical to ensuring the accuracy and credibility of the information presented.

Interviews allow journalists to capture the human side of a story. Speaking directly to individuals involved in the issue being investigated can provide personal experiences, emotions, and insights that go beyond the documents and data. Interviewees might provide exclusive information or details that are not available through other sources. This can give depth to the story and provide a unique angle.

Interviews with experts in the field can provide valuable context and analysis. Experts can help interpret complex information like environmental, legal or medical perspectives, provide historical background, and explain the implications of the investigative findings.

Conducting interviews with various stakeholders, including those with differing opinions, adds balance and perspective to the story. It ensures that the report considers a range of viewpoints and avoids bias. It also allows journalists to cross-reference information and verify facts. If multiple sources corroborate the same information, it strengthens the credibility of the investigative report.

Interviews can lead to the discovery of new leads, sources, or documents that might not have been previously considered. These new avenues of information can lead to more comprehensive investigations.

Verifying sources is crucial to ensure that the information provided is accurate and credible. This is especially important in investigative journalism, where the stakes are high and misinformation can have serious consequences. Verifying information from different sources helps journalists to fact-check claims and statements. This is essential for maintaining the accuracy of the report and avoiding errors.

Verifying sources helps journalists avoid being manipulated by individuals with ulterior motives. It helps ensure that the information provided is genuine and not intended to mislead. It also helps journalists avoid legal and ethical pitfalls, as reporting false or unverified information can lead to legal actions and damage to the media outlet and the journalist's credibility.

In summary, therefore, interviews are critically important in investigative reporting. Even where you have obtained all the records or documents you require, you will most probably also need to conduct interviews, which are important in investigative reporting for many different reasons as the records or documents you have may not be sufficient to tell the whole story. Interviews are very important for:

- Explaining technical data or information
- Cross-checking facts in a documents or contained in records

- Filling gaps in your information which are not explained by the documents or records that you have
- Getting expert or personal opinions on the facts contained in a document or record

You may also need to conduct interviews to give an opportunity to any person or institution indicted or negatively portrayed in the documents to state their side of the story. This is an important professional requirement in journalism to satisfy the principles of objectivity, balance and fairness in reporting.

### **Data Journalism**

Data have become an important part of life. Today, humans generate and store billions of pieces of data which when analysed give insight into various issues and are able to transform lives as they enable individuals and groups to make better decisions.

Investigative reporters often use data-driven techniques to uncover patterns, trends, and connections in large datasets. Data analysis can reveal insights that are not immediately apparent to the ordinary eye.

Data journalism allows investigative journalists to analyze large datasets to identify hidden patterns, trends, and correlations that could reveal significant stories. By spotting anomalies or connections within the data, journalists can uncover stories that might otherwise go unnoticed.

Data can provide empirical evidence to support investigative findings. Whether it is financial transactions, public records, or social media data, using data to back up claims adds a layer of credibility to the investigative report.

Data-driven reporting brings an additional level of transparency and credibility to investigative journalism. Readers can explore the data themselves, verify claims, and draw their own conclusions. This transparency helps to build trust with the audience.

Data visualization techniques, such as charts, graphs, and interactive maps, can turn complex datasets into understandable and engaging stories. These visual elements enhance the impact of investigative reports and help readers grasp the significance of the information being presented.

Large-scale data analysis can reveal systemic issues and trends that affect society. Investigative journalists can therefore use data to expose inequalities, discrimination, and other societal problems that might not be immediately apparent.

Data can be used for fact-checking statements made by individuals or institutions. Investigative journalists can verify claims by comparing them with available data, holding sources accountable for their statements.

### **Narrative Building**

Investigative stories often involve complex topics that may not be easily understandable to the general public. Skilled reporters use storytelling techniques to present the information in a compelling and coherent manner.

Reporters can effectively use storytelling techniques to build their narratives and present information in a compelling and coherent manner, making their reporting more engaging and memorable for the audience. There are a variety of storytelling strategies that journalists can employ to make their investigative reporting outputs much more compelling and effective.

For instance, by starting the story with a strong hook that is captivating and an attention-grabbing opening. A compelling introduction can pique the audience's curiosity and encourage them to keep reading or listening. Structuring the information in a narrative arc with a clear beginning, middle, and end, the story should have a natural flow that guides the audience through the events or information being presented.

Again, reporters can use descriptive language to paint a vivid picture of the people, places, and events involved in the story. Sensory details and imagery

can help the audience connect emotionally to the content. Whether it is real people or organizations involved in the story, reporters should develop them as characters with distinct personalities and motivations. This humanizes the information and makes it more relatable.

Reporters should “Show, Don't Tell”. Instead of simply stating facts, reporters should show the audience the evidence or examples that support the information they are presenting. Using anecdotes, real-life stories, or quotes help to illustrate key points.

Introducing conflict or tension help to keep the audience engaged. This could be a problem that needs solving, a controversy, or an obstacle that the story's subjects face. Analogies and metaphors can also make complex information more accessible and relatable. Comparing unfamiliar concepts to familiar ones helps the audience grasp the content better.

Reporters should include and share personal perspectives from those directly involved in the story. First-hand accounts and interviews can add authenticity and emotional resonance.

If the story involves unfolding events, reports are encouraged to build suspense by gradually revealing information and its implications. This keeps the audience curious about what will happen next.

Maintaining consistency by ensuring the story's tone and style remain consistent throughout, a cohesive narrative is written which helps the audience stay engaged and follow the flow of information easily.

Reporters are encouraged to avoid jargon and complex language. Rather, they should use language that is clear, straightforward, and accessible to the target audience. Unnecessary jargon or technical terms might confuse readers.

While storytelling is essential, reporters should avoid unnecessary tangents

or excessive details. They should keep the story concise and focused on the main message. The story should explain the significance of the information being presented. Answer the "why" behind the story to help the audience understand its importance.

Where possible, reporters should use multimedia elements by incorporating visuals like photographs, infographics, or videos to enhance the storytelling and provide additional context.

Conclude the story with a strong and thought-provoking ending that leaves a lasting impression on the audience.

By applying these storytelling techniques, reporters can make their information more engaging, coherent, and compelling, resulting in a deeper connection with their audience and a better understanding of the issues being reported.

### **Public Impact of Investigative Reporting**

The goal of investigative reporting is to create a positive impact on society by raising awareness about critical issues, exposing corruption, promoting transparency, and holding powerful individuals or institutions accountable. Investigative reporters need to be careful about leaks. While leaks may be important for alerting a reporter about a specific issue, problem or development, the reporter must do his/her own research by digging deeper rather than just relying on the leak. If they rely only on leaks from individuals and do not dig deeper than what they are presented, they may end up allowing themselves to be used to manipulate public opinion and to advance the personal agenda of the supposed whistleblower, rather than the public interest.

For an investigative story to make an impact, journalists embarking on such an assignment are encouraged to select investigative topics that are relevant to the community, have broad significance, and address issues affecting a large number of people. Stories that resonate with the audience are more likely to generate a positive response.

To ensure impact, reporters should put a human face on the investigative story by sharing the personal stories and experiences of those affected. This approach helps readers empathize with the subjects and understand the real-life impact of the issues.

Journalists embarking on investigative reporting should encourage readers to share their experiences, opinions, and solutions related to the investigative topic. Engaging with the audience through comments, social media, or forums can foster a sense of community and collective action.

Journalists will also do well to work with relevant advocacy groups, NGOs, or experts in the field to extend the reach of the investigation and develop potential solutions. These organizations can help amplify the message and advocate for change.

Investigative stories should clearly identify the parties responsible for the issues exposed in the investigation. Holding these parties accountable, whether individuals or institutions, can put pressure on them to address the problems.

After its initial publication, reporters should endeavour to continue to cover the story to keep readers informed about developments, progress, or setbacks related to the issues raised in the investigation. Follow-up reporting helps maintain momentum and encourages action.

An investigative story should offer constructive solutions and policy recommendations based on the investigation's findings. Presenting viable alternatives can empower readers and decision-makers to take action. Reporters should use the platform of the publication to advocate for change and support reforms related to the investigated issues. Editorials and op-eds can voice strong opinions and encourage public debate.

After publishing/broadcasting the investigative story, the reporter should endeavour to track and measure the impact of the investigative story; by



looking for tangible changes, policy shifts, or improvements resulting from the publication of the report. The reporter should also highlight positive outcomes or changes that have occurred as a direct result of the investigative report. Celebrating success stories can motivate others to take action.

### **Editorial Review**

Investigative stories must undergo rigorous editorial review and fact-checking processes to ensure accuracy and fairness before they are published or broadcast. The editorial review ensures that the story is water-tight and all loopholes that those indicted in the story can explore are covered. During the editorial review, relevant questions will be asked, relevant documents verified and claims double-checked before going public.

Editorial review ensures that the investigative report meets high standards of accuracy, fairness, and clarity. It helps identify and rectify errors, inconsistencies, or weak arguments in the story.

Investigative reporting relies heavily on facts and evidence. Editorial review involves fact-checking the story's claims and verifying the accuracy of the information presented.

Investigative reports can delve into sensitive topics and raise legal and ethical concerns. As a result, editorial review ensures that the story adheres to the organization's ethical guidelines and legal standards, reducing the risk of potential legal issues.

Editors provide feedback on the story's structure, helping to arrange the information in a logical and compelling manner. They can suggest improvements to the narrative flow and the order of presenting key findings.

Investigative reports often involve complex information and data. Editorial review helps simplify the language and ensure that the report is clear and understandable to a broader audience.

Editors should ensure that the investigative report provides a balanced perspective by giving fair coverage to all relevant parties involved in the story. They can help journalists avoid bias and maintain objectivity.

Editors should work with journalists to refine the focus and angle of their stories. They can help sharpen a story's central message and ensure that it aligns with the publication's mission and audience interests.

Editors should help to provide context for the investigative report, explaining why the story is significant and relevant to readers. This can involve additional background information or links to related articles.

Editorial review includes confirming the credibility of sources used in the investigation. This verification process ensures that the information comes from reliable and trustworthy sources.

Through editorial review, editors may suggest further research or data analysis to strengthen the investigation's findings and support its conclusions.

In some cases, investigative reporting may involve risks for both the journalist and the sources. Editorial review includes assessing potential legal and safety concerns and implementing necessary precautions.

### **Dealing with Risks Associated with Investigative Reporting**

Investigative reporting can be risky, especially when dealing with powerful entities like cults, gangs or exposing sensitive information. Courage and determination are essential traits for investigative journalists. Reporters on dangerous investigative assignments face significant risks, and ensuring their safety should therefore be a top priority in the process of investigative reporting.

To ensure their safety, reporters embarking on dangerous investigative assignments must take some precautions before, during, and possibly after

the assignment. Before starting the assignment, such reporters should gather as much information as possible about the potential risks involved in the investigation, identify the potential hazards and challenges specific to the location and subject matter. They should inform their colleagues and supervisors about the details of their investigative assignment, including the location, the people involved, and the potential risks. They should regularly check in with them and establish a communication protocol to maintain contact during the assignment.

If possible, such reporters should undergo training in personal safety and security measures, such as situational awareness, conflict management, first aid, and emergency response. While on the assignment, reporters should avoid drawing unnecessary attention to themselves. They should dress appropriately for the culture and avoid displaying expensive equipment or accessories that could make them a target.

Other safety measures they can take include having a clear exit strategy and knowing how to get out of dangerous situations quickly and safely. This may include knowing the locations of safe houses, embassies, or local law enforcement offices as well as having the relevant contact details. They should also learn and use encrypted communication tools and be cautious about sharing sensitive information digitally.

### **Persistence and Time Investment**

Investigative reporting often requires long-term commitment due to the complexity of the topics and the amount of research involved. It may take weeks, months, or even years to complete a single investigation. It is unlike routine news reports of what is happening every day or coverage of events. Therefore, investigative reports should not be affected by newsroom deadlines. Reporters embarking on investigative reporting should be prepared to face challenges and persevere through difficulties to get to the truth.

Investigative reporting requires a passion for seeking the truth and uncovering important stories that can make a difference. Reporters who do not have the passion must not embark on such assignments. Once a reporter

has decided to embark on an investigative reporting assignment, he/she should be prepared to invest significant time, effort, and resources into a single story.

In complex investigations, collaborating with other journalists or media organizations can be beneficial. Sharing resources, insights, and manpower can yield better results. Therefore, investigative reporters should not shy away from collaborating with other journalists, especially where it will involve trans-border or trans-national investigation.

Journalists embarking on investigative reporting are encouraged to keep meticulous records of their research, interviews, and findings as these documentations will be crucial for fact-checking and verifying information later.

Investigative journalism can lead to significant changes or policy shifts. Reporters who are embarking on investigative reporting should, therefore, ensure they keep track of the impact of their stories and follow up on developments related to their investigations.

### **Ethics and Legal Considerations**

Investigative reporters must adhere to ethical standards of journalism and follow legal guidelines. This includes protecting sources, avoiding plagiarism, and ensuring accuracy in reporting.

### **Conclusion**

By incorporating these and other elements into their work, investigative journalists play a vital role in enhancing democratic governance and accountability in government as well as keeping the public informed about issues that matter.

## CHAPTER THREE

### The Role of the FOI Act in Investigative Reporting

#### Introduction

At the heart of investigative reporting is the ability of the journalist to get information. Such information may be through official sources, such as through interviews, or records and documents officially made available to the journalist. It may also be through unofficial sources that the journalist has cultivated. In either case, the FOI Act is a great asset as it enhances investigative reporting by giving the journalists an instrument with which to legally obtain information.

Investigative reporting is simply the putting together of evidence to substantiate or establish a fact or hypothesis. As indicated earlier, a very important part of this process is getting documentary evidence which cannot be easily refuted. Public records and documents are therefore frequently critical and invaluable assets for investigative reporting.

There are multitudes of documents covering a wide variety of issues, generated daily and stored by various public institutions at all levels of government. The FOI Act helps the journalist to: know if a particular information is available or exists; determine who has the information; and obtain the record, document or other information from that custodian.

The FOI Act makes investigative reporting much more feasible but it does not remove the necessity for tenacity and rigorous checking of facts.

Even with the FOI Act, investigative reporting remains a painstaking process of gathering evidence which may require a journalist to submit several applications for information to many different public institutions and possibly private entities.

A journalist may also have to go through a systematic process of tracking, sorting, analyzing and interpreting documents or information..

### **How Journalists and the Media Can Use the FOI Act**

FOI Laws are designed essentially as a check against corruption and to hold public authorities accountable to citizens. By systematically using the FOI Act to target certain types of information and materials, the media and individual journalists can help to reveal corruption, abuse of public trust, abuse of power or other wrongdoings.

Ultimately, this can help to push back on corruption and improve accountability. FOI requests can be used to find out whether public authorities and officials as well as private bodies covered by the Act are complying with or enforcing applicable rules, standards, regulations, codes, etc. This is particularly relevant for regulatory bodies and agencies.

There are dozens of such regulatory bodies and agencies in Nigeria covering a wide range of sectors, most of which are often ignored.

Below is a list of some regulatory bodies and agencies in Nigeria:

- National Agency for Food and Drug Administration and Control (NAFDAC)
- Nigerian Institute of Town Planners
- Medical Laboratory Council of Nigeria
- Corporate Affairs Commission (CAC)
- Central Bank of Nigeria (CBN)
- Department of Petroleum Resources (DPR).
- Standards Organisation of Nigeria (SON)
- Nigerian Communication Commission (NCC)
- Consumer Protection Council (CPC)
- Town Planners Registration Council of Nigeria

- Council For the Regulation of Engineering Nigeria (COREN)
- National Lottery Regulatory Commission
- Nigerian Copyright Commission
- Bureau of Public Procurement (BPP)
- Nigerian Electricity Regulatory Commission (NERC)
- Dental Technology Board
- Code of Conduct Bureau (CCB)
- Medical And Dental Council of Nigeria
- Nursery and Midwifery Council of Nigeria
- Universal Primary Education Board
- Independent National Electoral Commission (INEC)
- Securities and Exchange Commission (SEC)
- Nigerian Shippers Council
- Revenue Mobilization Allocation and Fiscal Commission (RMAFC)
- Directorate Of Road Traffic Services (VIO)
- Librarians' Registration Council of Nigeria
- Internet Exchange Point of Nigeria, etc.

Their mandates and functions require them to carry out a variety of activities, such as:

- Conducting periodic audits of the institutions, whether public or private, that they regulate
- Submission of reports from such audits
- Enforcing consumer protection codes or regulations
- Enforcing public safety codes or regulations in their different sectors
- Monitoring and enforcing food hygiene codes and regulations
- Implementing pollution control methods and procedures
- Establishing and implementing procedures for issuances of permits, licences, etc.

As part of investigative reporting processes or assignments which would involve other activities or strategies, or even in the course of routine journalism practice, requests can therefore be made under the FOI Act for information about:

- Reports of audits carried out in the different sectors covered by the regulatory bodies
- Results of tests or analyses conducted
- Reports from the inspections of products, goods and services
- Frequency of visits to premises undertaken by oversight or regulatory authorities to public and private institutions or companies covered by them
- The reports of investigations carried out by the regulatory body on any issue within their mandates.
- Actions taken as a result of findings from any investigation
- The number of complaints reported to them or received by them about violations of relevant codes, standards, regulations, etc;
- Actions taken on such complaints, the outcome of such actions; etc.

Such information can be used to establish patterns of behaviour by individuals as well as private or public institutions breaches of codes, standards, regulations, etc.

Requests can also be made under the FOI Act to seek and obtain information relating to:

- Expense claims of public officials for a variety of activities, including travels, meetings, etc.
- Monitor the processes of contract awards, the value of contracts awarded, the standards of performance, etc.
- Check the revenue and expenditure profiles of public institutions.
- The FOI Act can be used to obtain raw data from public institutions, which are then analysed to establish patterns or detect any breaches of the Law, rules, regulations, codes of conduct, etc.



- It can also be used to extract the results or findings of unpublished investigations or enquiries.

## **Making a Request for Information**

*The FOI Act does not specify what details should be contained in an application for information. No Guidelines or Templates have also been issued by the Attorney-General of the Federation or by the various public institutions for members of the public to guide applicants requesting information.*

*However, the Federal Ministry of Justice has issued “**Operational Guidelines for Public Authorities on the Implementation of the Freedom of Information Act, 2011**”, to assist public institutions in their implementation of the Law.*

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

*Paragraph 10(1) of the Guidelines stipulate that:*

***“Under the Act, any written request for recorded information under section 1 of the Act which is not routine business should be considered a freedom of information request.”***

*The Guidelines, however, provide further in Paragraph 10(3) that:*

***“Requests for information or records under the Act must be in writing, stating the name, address and signature of the Applicant; date of the application, a good description of information or record requested; the form the requested information may be transmitted; and any other information as may be considered appropriate from time to time.”***

*The Guidelines also provide in Paragraph 10(4), consistent with the provisions of the Act, that:*

***“Oral application may be made to an authorized official of a public institution who shall in turn reduce the request in writing and shall provide a copy of the application to the applicant.”***

*In addition, the Guidelines state in Paragraph 10(5) that:*

***“Illiterate or disabled applicants may make applications under the Act through a third party.”***

*In requesting any information, record or document, you should state clearly in your application that you are applying under the FOI Act. Your application remains a valid request for information regardless of whether you state in your application that it is made under the FOI Act. However, by stating clearly that you are applying for information pursuant to the FOI Act, you remove any room for doubt in the event of any dispute later on. This is important for a number of reasons, including the following:*

- Section 30(2) of the FOI 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 FOI Act, any dispute over your right of access to information will have to be resolved in accordance with the provisions of the FOI Act.
- There are other laws such as the Public Procurement Act, 2007; the Nigerian Extractive Industries Transparency Initiative (NEITI) Act, 2007, etc. also have clauses on the disclosure of information but their procedures and enforcement mechanism are not as clear and as strong as those provided in the FOI Act. The FOI Act gives you a stronger

right of access to information than these other laws that you may also use to apply for some types of information. 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.

- 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. These other laws cannot be used to withhold information from you when it is made under the FOI Act. By mentioning that you are applying under the FOI Act, the public officials dealing with your requests are reminded that they have to take this fact into account and deal with your application much more seriously.

*Your application for information, records or documents should therefore include your name, address and other contact details as you would include in any normal official correspondence.*

*It is advisable that in making a request, your application should contain sufficient detail to enable the public institution identify the record, document or information that you are seeking and provide you with the information.*

*Your request should be simple and straightforward. Describe the information, record or document that you are applying for as clearly and as precisely as possible. The more specific you are in your description, the easier it will be for the public institution to find it and the more difficult it will be for the public institution to evade your request.*

*Include in your application any information you have that may make the document, record or information that you are requesting easier to locate. For instance, 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 the meetings of the Procurement Planning Committee of the Ministry of External Affairs, held on May 28, 2015, at which a the 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 2, 2019 and June 30, 2023, leading to the signing of the Memorandum of Understanding dated July 8, 2023*

*“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.”*

You should ensure that the information you are requesting is as specific as possible and avoid making requests such as “I request all the information, records and documents you have on waste disposal in Lagos State.”

*You should 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 can indicate whether you would like to be given access in the form of photocopies or printouts or electronic format sent to you by email or given to you on a disk. You may simply want to inspect the records or documents*

without taking copies or by first inspecting the records or documents 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.

*Indicate in your application that you expect to receive the information, record or document promptly, but in any case no later than the 7 days, as provided by Law.*

## CHAPTER FOUR

### Where Access to Information is Denied

When a request for information is made under the FOI Act, a number of outcomes are expected. The public institution to which the request is made can grant access to the full range of information requested, grant partial access, transfer the request, request for an extension of time, or deny the request. The Act specifies that a request for information should be granted within seven days of the request being made.

The Act also specifies the mode of response to FOI requests.

Applicants who are denied access to the information they requested have an automatic right of access to the courts to challenge the decision. In most cases, it would be advisable for such applicants to first explore various administrative mechanisms before exercising the litigation option, in view of the cost, uncertainty involved in judicial processes and the prolonged nature of court cases.

#### **Non-Judicial Mechanisms**

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. SERVICOM desks do not really have any enforcement powers, but they may be able to intercede on behalf of an applicant who has been denied information.

Other administrative mechanisms open to an applicant who is refused access to information include the National Human Rights Commission (NHRC) and the Public Complaints Commission (PCC).

The mandates of the two institutions are to protect and assist citizens whose rights have been violated. Both agencies have offices across the country,

making them easily accessible. Both institutions have the power under their enabling laws to intervene on behalf of citizens who are denied their rights, including the right of access to information, and to investigate such cases and institute legal proceedings in court to vindicate the rights of such citizens, should the need arise. Both institutions can also exercise the strong powers given to them by law to investigate cases and impose sanctions.

The NHRC is empowered by the National Human Rights Commission Act, as amended, to deal with all matters relating to the promotion and protection of human rights guaranteed by the Nigerian Constitution and several regional and international human rights instruments, including the African Commission on Human and Peoples Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR). It is also authorized to assist victims of human rights violations and seek appropriate redress and remedies on their behalf.

The NHRC has power under Section 6(2)(d) of the NHRC Act, as amended, to

***“Compel any person, body or authority, who in its opinion, has any information relating to any matter under its investigation to furnish it with any information or produce any document or other evidence which is in his or her custody and which relates to any matter being investigated.”***

Under Section 6(4)(a) of the NHRC Act, as amended,

***“it is an offence for any person, body or authority to refuse to produce evidence, including documentary evidence, in response to a written request to do so.”***

Similarly, under Section 6(4)(d) of the Act,

***“it is an offence for any person, body or authority to refuse to comply with lawful directives, determination, decision or finding of the commission.”***

Any person who commits any of these offences under Section 6(4) of the NHRC Act is liable on conviction to imprisonment for a period of six months or to a fine of N100,000 or to both imprisonment and fine.

The Public Complaints Commission (PCC), originally established in 1975, has similar powers under its enabling Law, the Public Complaints Commission Act. Section 5(2) of the Public Complaints Commission Act gives it the power to investigate either on its own initiative or following complaints lodged before it by any person, any administrative action taken by:

- any Department or Ministry of the Federal or any State Government
- any Department of any local government authority (howsoever designated) set up in any State in the Federation;
- any statutory corporation or public institution set up by any Government in Nigeria;
- any company incorporated under or pursuant to the Companies and Allied Matters Act whether owned by any Government or by private individuals in Nigeria or otherwise howsoever; or
- any officer or servant of any of the aforementioned bodies.

The PCC Act provides in Section 5(3)(c) that:

***“any Commissioner shall have access to all information necessary for the efficient performance of his duties under this Act and for this purpose may visit and inspect any premises belonging to any person or body mentioned in subsection (2) of this section”***

The PCC Act provides in Section 8(2) that

***“If any person required to furnish information under this Act fails to do so or in purported compliance with such requirement to furnish information knowingly or recklessly makes any statement which is false in a material particular, he***



***shall be guilty of an offence and liable on conviction to a fine of N500 or imprisonment for six months or to both such fine and imprisonment.”***

Section 9(1) of the PCC Act states that:

***“In the discharge of his functions under this Act, a Commissioner shall have power to summon in writing any person who in the opinion of the Commissioner is in the position to testify on any matter before him, to give evidence in the matter and any person who fails to appear when required to do so shall be guilty of an offence under this Act.”***

The Act goes on to stipulate in Section 9(2) that

***“Any person guilty of an offence under this section shall on conviction be liable to a fine of N500 or imprisonment for six months or to both such fine and imprisonment.”***

Journalists, media houses or applicants who are dissatisfied with the outcome of any or all of these processes may approach the courts directly.

## **Judicial Mechanisms**

The FOI Act provides in Section 20 that an applicant who is refused access has a right to apply to a 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 one or 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.

Section 21 of the FOI Act requires the courts 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.

# CHAPTER FIVE

## Conclusion

The FOI Act is a great tool that, if systematically and strategically used by the media for investigative reporting, will help enhance, enrich and deepen the outcome of investigative reporting and stand the journalist out among the others.

This can be so because the FOI Act grants journalists and media outlets, as it does other members of the public, a legally enforceable right of access to information and records in government custody. As purveyors of information, the media stand to gain more from the liberalization of government-held information and records.

Using the Law, journalists and media houses can approach virtually any public institution and where necessary, some private bodies, to request for information which they are investigating or that is relevant for their work. The Law obligates public officials and public institutions to give journalists, like other members of the public, the information they request within seven days on average.

Additionally, civil servants and other public officials who are privy to information which 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, and which can be subject of investigative reporting, will now be encouraged to come forward voluntarily to reveal such information to the media or to the public through other channels without fear of reprisals.

Prior to the enactment of the FOI Act, a major challenge for most journalists was the difficulty in obtaining information from government bodies, among others, through legitimate channels.

Section 22 of the 1999 Constitution (as amended) which imposes a duty on the media to hold government accountable to the people is not justice-able and provides no tool to enable the media to perform that duty. The FOI Act now serves as the needed tool to hold government accountable. The situation was worsened by the absence of any legal protection for journalists' confidential sources, which created additional challenges for journalists and the media to persuade sources to give them information unofficially. Now we have a legal right of access to information and the Act specifically exempts the disclosure of journalism confidential sources thereby strengthening the job of investigative reporting.

The Act also protects whistleblowers who may disclose information without authorization as it 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 he 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 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. and none of these instruments can be used to limit its scope or application.

All the above make the FOI Act a strong legal tool to carry out investigative reporting.

The FOI Act has the potential to provide access to vital information involving the utilisation of public resources and journalists and media houses should use the law as a tool and an instrument to unearth wrong-

doings and thereby hold the public officials accountable through evidence based investigative reporting.

In using the Act for investigative reporting, the journalist should ideally have the public interest at heart especially when such investigative story is aimed at, among other things, curbing corruption, ensuring transparency and accountability in government and thereby improving service delivery in all sectors.

A good knowledge of the FOI Act will make it easy for the media to use the law to strengthen investigative reporting and make a mark in their profession.

## Sample Application for Access to Information

Your Name

Your Address

Your Telephone Number

Your E-mail Address

Date

The Freedom of Information Desk Officer (*You may also choose to address the letter to the head of the institution, namely: the Permanent Secretary, in the case of a Ministry; the Director-General, in the case of an Agency; or the Managing Director, in the case of a public corporation*)

Name of Public Institution

Address of Public Institution

Dear Freedom of Information Desk Officer,

### **Application for Information under the Freedom of Information Act**

In accordance with the Freedom of Information Act, 2011, I hereby apply for copies of the following documents:

1. A copy of the minutes of the meetings of the Procurement Planning Committee of the Ministry of External Affairs, held on May 2, 2023, at which a the decision was taken to purchase 250 laptop computers ers of the Ministry.
2. Copies of all correspondence, including emails, between officials of the Ministry of Information and Coconut Communications Limited, from January 10, 2015 and March 30, 2023, leading to the signing of the Memorandum of Understanding dated April 12 1, 2023.
3. A list of all the applications for building plan approvals and permits granted by the Ministry of Urban Planning between May 29, 2019 and May 28, 2023. 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

I would be grateful if you could provide me with photocopies of these documents.

Should you require any clarification regarding this application, please do not hesitate to contact me either by phone (your phone number) or by email (your email address).

I look forward to receiving these documents promptly and, in any event, within 7 days of your receipt of this application, as required by the Freedom of Information Act, 2011.

Yours sincerely,

Signature



*Media  
Right  
Agenda*