

Freedom of Information Act, 2011

(Simplified and Abridged Version)



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Media Rights Agenda
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Introduction

The Freedom of Information (FOI) Act, 2011 which became law in May 2011 is an essential legislation to aid the quest for transparency, accountability, good governance and democratic participation in Nigeria. It may have taken a long time in getting passed into law but finally it is here and ready for use.

The enactment of the law was only the first phase in the process of ensuring that the requirement for transparency and accountability in governance in Nigeria is codified and that a new culture of openness is instituted in the country. The next phase of the process is ensuring that a broad section of the citizens have a good understanding of the content, as well as the general and fundamental principles of the law and are able to use it effectively.

The effective use of this important piece of legislation can be greatly hampered if ordinary citizens in Nigeria are not aware of the Law, do not understand it or do not know how to use it.

This abridged and simplified version of the Freedom of Information Act is an attempt to make the FOI Act easily understandable to ordinary people. This is because it would be unrealistic to expect all Nigerians to thoroughly understand the Act which, like most laws, is written in somewhat legal language. Although the language of the Freedom of Information Act is not too legalistic, the prospect of reading a piece of law nonetheless poses a lot of challenges for many ordinary citizens who are not lawyers. The goal therefore is to provide a slightly shorter, easy to read and understand version of the Act which provides essentially the main information and essence of the Law to the reader.

It is expected that this abridged and simplified version of the Freedom of Information Act would make it possible for many more people to read and understand the Law and use it.

Additional information may be obtained by writing to foi@mediarightsagenda.net

EXPLANATORY MEMORANDUM

This Law makes public records and information more freely available to everyone. It provides for easy access to public records/information; protects public record/ information while maintaining the interest of the rest of the public/citizens and the protection of peoples' privacy. It also protects serving public officers/civil servants from being punished in any way for giving out certain kinds of official information without the permission of their superiors or for not following orders before giving out such information to members of the public.

FREEDOM OF INFORMATION LAW, 2011 ARRANGEMENT OF SECTIONS

Section:

1. Rights of access to records.
2. Information about public institution.
3. Request for access to records.
4. Time for granting or refusing requests.
5. Transfer of requests.
6. Extension of time limit for granting or refusing requests.
7. Where access is refused.
8. Fees.
9. Record keeping and maintenance of records.
10. Destruction or falsification of records.
11. Exemption of international affairs and defence.
12. Exemption of Law enforcement and investigation.
13. Training of officials on the right to information and on the effective implementation of this Law.
14. Exemption of personal information.
15. Exemption of third party information
16. Exemption of personal or other privileges conferred by Law
17. Exemption of course or research material.
18. Severability.
19. Denial by a public institute to disclose records.
20. Judicial review.
21. Hearing in a summary way

22. Access to information by the Court.
23. Court to take precautions against disclosing information
24. Burden of proof.
25. Order to disclose information.
26. Exempted materials.
27. Protection of public officers.
28. Documents under classification.
29. Submission of reports.
30. Complimentary procedures.
31. Interpretation
32. Citation.

FREEDOM OF INFORMATION LAW, 2011

This Law makes public records and information more freely available to everyone. It provides for easy access to public records/information; protects public record/ information while maintaining the interest of the rest of the public/citizens and the protection of peoples' privacy. It also protects serving public officers/civil servants from being punished in any way for giving out certain kinds of official information without permission from their superiors or for not following orders before giving out such information to members of the public.

PASSED by the National Assembly of the Federal Republic of Nigeria

1. (1) No matter what any other Law or regulation says, everyone has the right to get or ask for information, whether or not the information is in written form, that is under the control of any public officer, civil servant, , government agency or institution of any kind.
 - (2) Any member of the public asking for information under this Law should not be asked why he or she needs the information he or she is asking for.
 - (3) Any person who has a right to information under this Law, can take any public institution to Court to make that public institution to obey the provisions of this Law.
2. (1) Every public institution must keep all its records and information about all its activities operations and businesses.
 - (2) Every public institution must keep its records and information in a properly organized manner that helps the public to have easy access to such information.
 - (3) Every public institution must publish the following information as stated in subsection (4) of this section
 - (a) a description of what the organization does and its responsibilities, this also includes all its programmes and what each division, branch or department is doing.

- (b) a list of all
 - (i) types of records that are held by the institution to make it easy to enjoy the right to information under this Law, and
 - (ii) Manuals used by employees of the institution in running or carrying out any of the programmes or activities of the institution. .
- (c) a description of documents containing final opinions taken to arrive at a decision on a case which will also include the views for those who agreed or disagreed with the position decided.
- (d) documents containing
 - (i) the main rules of the institution,
 - (ii) statements and interpretations of policy which have been taken by the institution,
 - (iii) final planning policies, recommendations, and decisions;
 - (iv) accurate reports, inspection reports, and studies whether prepared by or for the institution;
 - (v) information on public or other funds received or spent by the institution;
 - (vi) the names, salaries, titles, and dates of employment of all employees and officers of the institution;
 - (vii) the rights of the state, of public institutions, or of any private person(s);
 - (viii) the name of every official and the final records of voting in all meetings of the institution;

- (e) a list of
 - (i) files containing requests for any contracts, permits, grants, licenses or agreement,
 - (ii) reports, documents, studies, or publications prepared by outside contractors for the institution, and
 - (iii) Materials containing information relating to any money received or contract made by or with the institution and another public institution or private organization;
 - (f) the title and address of the main officer of the institution whose job it is to receive any request for information under this Law. But the failure of any public institution to publish this information will not affect the public's right of access to information held by such a public institution.
- (4) The information required to be published in this section must be widely distributed and made available to members of the public through different means which include print, electronic and online sources and at the offices of the public institutions concerned.
 - (5) A public institution must periodically update and review the information required to be published under this section and must also update the information whenever there is any change.
 - (6) Any person who has with the right of access given by this Law have the right to take the institution to Court to make that public institution to obey what is written in this section.
 - (7) Public institutions are all authorities that are in the executive, legislative, or judicial arms of government, including ministries, and extra-ministerial departments of the government, together with all corporations established by Law and all companies which government control, and private companies using public funds, providing services on behalf of the government or performing government functions.

3. (1) A request for access to a record or information under this Law must follow the procedure stated in section 1 of this Law.
 - (2) Any information or record asked for under this Law that does not exist on paper but can be viewed and printed out from a machine, that is used by the government or public institution shall be considered to be record kept under the control of the government or public institution.
 - (3) Illiterate or disabled persons who because of their condition are not able to ask for information or record as it is stated in subsection (1) of this section, may ask for the record or information through someone else.
 - (4) If any worker/official of a public institution who has the power to give out information receives a request for information or record that is not written, it is the duty of the official to write the request as it is stated in subsection (1) of this section and give a copy of the written request to the person asking for the information.
4. Where information is asked for under this Law, the public institution to which the request is sent must follow the rules stated in sections 6, 7, and 8 of this Law and must within 7 days after the request is received -
 - (a) make the information available to the person asking for it;
 - (b) where the public institution believes it cannot meet the 7 days deadline, the institution must notify the person in writing that some part or all of the information will not be given to him or her, giving reasons for not being able to give the information, and must state the section of this Law which gave it the power to refuse.
5. (1) Where a public institution receives a request for access to information, and the institution believes that another public institution has greater interest in the information, the institution may between 3 to 7 days after receiving the request transfer the request to the other institution with the greater interest, and if necessary, the information as well. The institution transferring the request must write to notify the person requesting the information

about the transfer. The written notification must also contain a statement informing the person requesting the information that the decision to transfer the request can be reviewed by the Court.

- (2) Where a request is transferred under subsection (1), it means the request is made to the public institution to which it was transferred on the day the public institution received it.
 - (3) For the purpose of subsection (1), a public institution has “a greater interest” in information if
 - (a) it was first produced by the institution or for the institution;
or
 - (b) the institution was the first public institution to receive the information.
6. The public institution may extend the time limit stated in section 5 or section 6 a request to a time not more than 7 days; if
- (a) the request is for a huge amount of records and which will disrupt the normal operations of the office, if all attention is given to getting the information.
 - (b) the public institution needs to have consultations to enable it respond fully to the request and the time set in the Law is not enough for the consultations. The public institution must write to the applicant notifying him or her of the extension and explaining whether the extension follows the reasons stated in this section. The notice given must contain a statement telling the person requesting the information that the person has a right to have the decision to extend the time limit reviewed by the Court.
7. (1) Where a government or public institution refuses to give access to all or part of the record or information requested for under this Law, the institution must explain in the written notification given to the person requesting the information, the reasons for the refusal, which section of the Law the institution is relying on and to also tell the persons requesting the information that he or she has the right to challenge the decision and have it reviewed by a Court.

- (2) This written notification shall give the names, position in the office and the signature, of each person who agreed that the information should not be given out.
 - (3) The government or public institution must say under subsection (1) of this section whether the information or record exists.
 - (4) If the government or public institution fails to give access to all or part of the information or record requested under this Law within the time limit given in this Law, it must be understood that the institution has refused to give access.
 - (5) where a Court establishes that an officer wrongfully refused to give out information or record, that officer has committed an offence and if convicted will be fined an amount of N500, 000 by the court.
8. The fees that must be paid for information given must not be more than the cost for photocopy or for transcribing the information, if it is necessary to transcribe it.
 9.
 - (1) every government or public institution must keep all information or record about how the institution is doing its job, the workers, what they are doing and any other important information or records that people should know about in the institution.
 - (2) every government or public institution must properly organize and maintain all the information or record that it has under its control, in a way that makes it possible for members of the public to easily get such information or record under this Law.
 10. It is a criminal offence for any officer or the head of any government or public institution covered by this Law to intentionally destroy, forge, change, or doctor any record kept by him or her before releasing it to any person, entity or community applying for it. If found guilty by the Court the punishment is at least one year imprisonment
 11.
 - (1) A public institution can refuse a request for any information if it believes that giving out the information will be bad for the relationship between Nigeria and other countries or for the defence of Nigeria.

- (2) No matter what is in subsection (1), any request for information must not be refused if what the public will gain is greater than any damage it will cause if the information is released.
12. (1) A public institution can refuse a request for any information if it contains
- (a) records compiled by any public institution for carrying out its internal administration and by any agencies like police, state security service or prisons etc for enforcing the Law and for the internal matters of the public institution, but only if giving out the information would -
 - (i) disturb ongoing and expected work to be carried out by Law enforcement agencies like the police, state security service, prisons and others;
 - (ii) disturb expected administrative actions to be carried out by the public institution;
 - (iii) make a person not to have a fair trial or hearing;
 - (iv) unavoidably identify a person that is giving information confidentially to a Law enforcement agency
 - (v) this exemption to making the information public must not apply where it will cause a person's private life to be open to the public against what is written in section 15 of this Law, except only where the interest of the public would be better served by having such record made available, and
 - (vi) disturb a criminal investigation from being carried out; and
 - (b) giving out information that can be harmful to the work of disciplinary institutions like juvenile homes and prisons

- (2) No matter what is written in this section, any request for information should not be refused where the information will serve the public better than refusing to disclose it
 - (3) A public institution may refuse to give out information that can reasonably be expected to be used to commit a crime
13. Every government or public institution must thoroughly train its workers on the public's right to receive information which is held by their offices as required by this law and on how to make the law workable.
14.
 - (1) Following subsection (2), a public institution must refuse to give out information that contains personal information. The list of such personal information includes
 - (a) files and personal information that is for clients, patients, residents, students, or other individuals receiving social, medical, educational, vocational, financial, supervisory assistance or people taken care of or receiving services directly or indirectly from public institutions;
 - (b) files and personal information kept by the public institution about its workers, those appointed, others applying to work there or those elected officials working in the public institution.
 - (c) files and personal information kept by public institution about people who applied to work there or are registered or given licenses by the government or public institution to work with the public institution.
 - (d) information required from any tax payer in connection with the assessment or collection of any tax unless the information is asked for by a law; and
 - (e) information that will reveal the identity of persons who have complained about something to the public institution or have provided information for the

administration, investigation, law enforcement or penal agencies about people that committed a crime.

- (2) A public institution can give out any information that contains personal information if -
 - (a) the person that the information concerns agrees it can be given out; or
 - (b) the information is already publicly available.
- (3) If any information given out is in the public interest and if by giving out the information it helps the public better than keeping the secret of that one person whom the information concerns, the public institution that is asked for such information must give it according to section 14 (2) of this Law.

15. (1) A public institution can refuse to give out information that contains
 - (a) trade secrets and commercial or financial information received from a person or business where such trade secrets or information are supposed to be secret or private, or where giving out such trade secrets or information may cause problem for the business of the other person that owns the information.
 - (b) if the information, when given out can spoil a contract law or any other agreement between the people; and
 - (c) letters and bids for any contract, grants, or agreement, including information which, if given out would negatively affect any procurement or give an advantage to any person.
- (2) a public institution regardless of subsection (1) can refuse to reveal all or part of the requested information that contains the result of environmental testing carried out for or by the public institution.

- (3) Where the public institution gives out all or part of such information that contains the results of a product or environmental testing, the institution must at the same time provide the person who requested the information with a written explanation of the methods used in conducting the test.
 - (4) A public institution must give out information described in subsection (1) of this section if giving out that information would be in the public interest as it concerns public health, public safety or protection of the environment and, if by giving out the information it helps public interest better than the financial loss or gain to the person or company.
16. A public institution may refuse to give out any information that is covered by the following privileges -
 - (a) Lawyer-client privilege;
 - (b) Doctor-Patient privilege;
 - (c) Journalism confidentiality privileges; and
 - (d) Any other professional privileges allowed by a Law.
17. A public institution may refuse to give out any information which contains course or research materials prepared by faculty members.
18. No matter what is in any other provision of this Law, the public institution can release part of requested information from an exempted list if they do not contain information that fall under the exempted categories.
19. (1) A public institution may refuse to give out any information if that information contains -
 - (a) test questions, scoring keys and other examination materials used to carry out academic examination or to know qualifications of a person asking for a license or employment

- (b) architects' and engineers' plans for buildings not built with public funds and for buildings built with public funds, so that the security plan is not made public; and
 - (c) library rotation and other records showing library users with specific materials:
- (2) No matter what is in this section, information should not be refused to any person if what the public will gain is greater than the damages the information will cause to the public institution.
20. Any person that is not given information where the information is not exempted can go to Court for a review of the matter within 30 days after the public institution refused to give out the information. The time can also be extended by the Court beyond the 30 days that this Law states.
 21. If any person goes to Court under section 20 the matter must be heard and decided within a short time.
 22. No matter what is in the Evidence Law, or any other regulation made under it, the Court may examine any information being requested under this law especially when it relates to a matter that comes to it under section 20 of this Law. Under this Law no information in the control of a public institution should be hidden from the courts on any ground.
 23. In any matter before the Court as result of asking for information under section 20, the Court shall be very careful especially if the Court is hearing only one side of the matter (ex parte) and carrying out the hearings in private to prevent the giving out of information by the Court or any person about such materials that the public institution should not have given out.
 24. In any matter before the Court as a result of section 20, the duty of showing or proving that the public institution has powers to refuse to give part or all of the information is on the public institution.
 25. (1) Where a public institution refuse to give out all or part of the information as a result of what is in this Law, the Court will ask the institution to give out all or part the information to the person asking for it -

- (a) if the Court finds out that the institution has no power by the law to refuse to give out the information;
 - (b) where the public institution is given powers by the law but the Court believes that the institution does not have good reasons to refuse to give out the information the person is asking for;
 - (c) where the Court finds that the gain in an information being made available to the public is greater and more vital than the interest being served if the request is refused, in whatever circumstance.
- (2) Any order given by the Court in fulfilling this section, may be made subject to whatever condition the court thinks is proper.

26. This Law does not cover the following -

- (a) materials that have been published or that available for the public to buy
- (b) Library or museum material made or kept as public reference or exhibition purposes; or
- (c) material that has been put in the National Library, National Museum or the non-public section of the National Archives of Nigeria on behalf of any person or organization that is not a government and/or public institution.

27. (1) No matter what is in the Criminal Code, Penal Code, the Official of Secrets Act, or any other enactment, no civil or criminal law suit shall be brought against an officer of any public institution, or against any person acting on behalf of a public institution, and no law suit shall be brought against such persons afterwards for giving out all or parts of any information with good intentions as a result of this Law, for any problem that will follow because of giving out the information or for failure to give any notice needed under this Law.

- (2) Nothing contained in the Criminal Code or the Official Secrets Act shall negatively affect any public officer who, without approval from his superiors gave out information which he reasonably believes to show
 - (a) a wrong doing against any law, rule or regulation
 - (b) bad use or waste of funds, fraud, and abuse of authority; or
 - (c) a clear and specific danger to public health or safety no matter whether such information was given without following the provision of this Law.
 - (3) No civil or criminal case will be brought against any person who receives the information or gives it out again.
28. (1) The fact that any information kept by a public institution is hidden by that institution for security reasons or that the document is a secret under the Official Secrets Act does not mean it cannot be given out if a person is to ask for that information under this Law, but in every case the public institution to which the request is made shall decide whether such information falls under the types referred to in sections 11, 12, 14, 15, 16, 17, 19, 20 or 21 of this Law.
- (2) If the public institution to which the request in subsection (1) is made, decides that such information is not the type mentioned in the sections referred to in subsection (1) then the person will be given the requested information
 - (3) If the public institution, to which the request mentioned in subsection (1) is made, decides that such information is the type listed in sections referred to in subsection (1), the public institution will write a letter to inform the requester.
29. (1) On or before February 1 of each year, every public institution must submit to the Attorney-General of the Federation a report which will covers the past one year and will include

- (a) the number of times the public institution decided not to give out information asked of it by members of the public, and the reasons for refusing to give out the information;
- (b) the number of appeals made by persons under this Law, and the reasons given by the court for upholding the refusal to give out information;
- (c) a report of whether the court has supported the decision of the public institution not to give out information under such circumstances and a brief and clear description of the extent of any information not given out
- (d) the number of people who asked for information and are waiting for it as at October 31 of the past year and the average number of days that such request had been waiting in the hands of the public institution as at that date;
- (e) the number of people who asked for information that were received by the public institution and the number of requests which the public institution was able to attend to during the period;
- (f) the average number of days taken by the public institution to process the different types of information that people asked for;
- (g) the total amount of money collected as fees by the public institution to attend to such people who asked for information; and
- (h) the number of workers doing full-time work for the public institution and whose duties are mainly attending to giving out information to members of the public, and the total amount spent by the public institution for attending to people asking for information.

- (2) Each public institution must make such report available to the public by different means including computer, telecommunications, or by other electronic means
- (3) The Attorney-General must make each report, which has been submitted to him, available to the public in hard copies, online and also at one electronic point where everybody can access the information.
- (4) The Attorney General must inform to the Chairman and minority leaders of the Committee on Government Reform Oversight of the House of Representatives and the Chairman and minority leaders of the Committees on Government Affairs and the Judiciary of the Senate, not later than April of the year in which each report is issued, of the existence of the report and make it available to them in hard copies as well as by electronic means.
- (5) The Attorney-General should develop a system for reporting and measuring performance in line with reports needed to be issued under this section and may create extra systems for such reports as the Attorney-General may believe to be useful in getting the work done.
- (6) The Attorney General, who has overall supervisory role under this Law, must ensure that all institutions to which this Law applies obey the requirements of the Law.
- (7) The Attorney-General must shall submit to the National Assembly an annual report on or before April 1 of each calendar year and the report must include for the last calendar year a list of the number of cases arising under this Law, those not given information in each case, how the matters were handled, and the cost, fees, and punishment that were considered.
- (8) The report must also include details of the efforts made by the Ministry of Justice to encourage all government or public institution to obey the Law

(9) For purposes of this section, the word

- (a) “government” includes any executive department, military department, government corporation, government controlled corporation, or other groups in the executive branch of the government (including the Executive Office of the President), or any other arm of government, or government agency or public institution; and
- (b) “information” means any term used in this Law to refer to information or record which includes any information that a government or a public institution is holding and any information over which this Law has power, that is with any public institution in any way that one can read it, including the ones that are not printed on paper but can be read in a computer or be seen on a screen.

30. (1) This Law is made to work with and not replace the procedures that have been on ground for giving out public records and information. It is not in any way meant to stop or change the way people have used to gain access to official information.
- (2) Where the question arises whether any public record or information is to be made available under this law, the question must be resolved by what is written in this Law, unless the law does not include it among the information to be given out.

31. In this Law

“applicant” means any person who is asking for information under this Law;

“request” means any way of asking for information made under this Law;

“Court” means a High Court or Federal High Court respectively.

“Foreign State” means any country other than Nigeria;

“Information” includes all records, documents and information stored in whatever form, including written, electronic, visual images, sound, audio recording, etc.

“Public Institution” means any legislative,(Senate, House of Representatives, States Houses of Assembly) executive (President, Vice-President, Governors, Deputy Governors), judicial (Supreme Court, Court of Appeal, High Court, Alkali Court, Magistrate Court), administrative or advisory body of the Government, including boards, bureau, committees or commissions of the country or any smaller office inside the government of the country, and any other committee and sub-committee that are funded by government. It will also touch private companies or groups that are performing government functions, providing government services or using government funds. ;

“Public record or document” means any type of record that was prepared, has been used or is being used, received, or is under the control of any public or private office that concerns or that will affect the public and includes any

- (a) writing on any material;
- (b) information recorded or stored or other devices; and any material taken from information that is recorded or stored;
- (c) label, marking, or other writing that is part or the whole of anything if it is attached to that thing;
- (d) book, card, form, map, plan, graph, or drawing,
- (e) photograph, film, negative, microfilm, tape, or other things that can show pictures or that the ordinary eye can see.

“Minister” means the Minister charged with responsibility for information;

“Person” include a company or group of persons whether registered or not; working alone or as a group;

“Personal Information” means any official information held about a person that can be identified but will not include information that concerns the work the person is doing as a worker or official of a public institutions.

32. This Law will be called the Freedom of Information Act, 2011

Media Rights Agenda (MRA)



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