

# **PASSAGE OF FREEDOM OF INFORMATION BILL IN NIGERIA: THE UNENDING JOURNEY.**

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## **Introduction**

Information has become the essential tool in the development process, in enhancing good governance and empowering people around the world. Unfortunately, virtually all government information in Nigeria is classified as top secret. This veil of secrecy makes it difficult to get information from any state agency. A plethora of laws prevent civil servants and other government officials from divulging official facts and figures. These laws include the Official Secrets Act, Criminal Code, Evidence Act, Public Complaint Commission Act, Statistics Act, Civil Service Rules etc. These officials including journalists are required upon appointment to swear an oath of secrecy not to disclose any information that comes their way unless specifically authorized to do so. The idea behind these laws is to protect vital government information but the level of secrecy is so ridiculous that some classified government files contain ordinary information like newspaper cuttings which are already in the public domain. Freedom of Information Bill is a bill which if passed into law will give every Nigerian a legal right of access to information, records, and documents held by the government or its agency. In Nigeria this bill was first submitted to the National Assembly in 1999. The continued delay in the passage of this bill by the National Assembly has continued to attract mixed reactions from stakeholders. This paper x-rayed its legislative history; examined the impediments, provisions, adequacy, weaknesses, public outcry and input of different interest groups. Recommendation was based on issues thereof.

## **Idea of Classified Information**

Classified information is information which has been deemed sensitive enough that access to it is restricted. A classic example of classified information is military intelligence circulated only among the people who absolutely need to see to it to reduce the risk of potentially catastrophic leaks of information. All governments and many large

corporations have systems in place for identifying and securing classified information to ensure that it does not fall into the wrong hands (Switch, 2010).

In Nigeria, Rule 010103 of the Public Service Rules of 2006, define classified correspondence to mean “correspondence which has been graded Restricted, Confidential, Secret or Top Secret” Most governments differentiate their classified information into several levels, ranging from top secret information which is only seen by a handful of people to unclassified information which is open to the general public. When information is evaluated to determine whether or not it should be classified, the primary concern is national security. Willful disclosure of information to the enemy is generally considered as treason. People who work for the government receive a security clearance which details the information they can access.

Rule 030415 of the Public Service Rule makes it mandatory for every permanent secretary / head of extra-ministerial office to ensure that all officers, employees and temporary staff under his control who have access to classified or restricted papers to sign the Oath of Secrecy in the appropriate form before they are granted such access and such declarations are safely preserved.

## **Laws Inhibiting Free Access to Information in Nigeria:**

### **1. Official Secrets Act**

Classified matter under this Act means ‘any information or thing which, under any system of security classification, from time to time, in use by or by any branch of the government, is not to be disclosed to the public and of which the disclosure to the public would be prejudicial to the security of Nigeria’.

A cursory look at the provisions of this Act would reveal that any person who

- (a). transmits any classified matter to a person to whom he is not authorized on behalf of the government to transmit it or
- (b). obtains, reproduces or retains any classified matter which he is not authorized on behalf of the government to obtain, reproduce or retain, as the case may be, is guilty of an offence.

Furthermore, in Section 1 (2) ‘A public officer who fails to comply with any instruction given to him on behalf of the government as to the safeguarding of any classified matter which by virtue of his office is obtained by him or under his control is guilty of an offence’.

### **Protection of Defence Establishments**

In Section 2 (1) A person who for any purpose prejudicial to the security of Nigeria-

- (a). enters or is in the vicinity of or inspects a protected place; or
- (b). photographs, sketches or in any other manner whatsoever makes a record of the description of, or of anything situated in, a protected place; or
- (c). obstructs, misleads or otherwise interferes with a person engaged in guarding a protected place; or
- (d). obtains, reproduces or retains any photograph, sketch, plan, model or document relating to, or to anything situated in, a protected place, is guilty of an offence.

## Restrictions on Photograph, etc During Periods of Emergency

### Under Section 3 (1)

No person shall, without permission in writing given by the president, photograph, sketch, or in any other manner whatsoever make a record of the description of such things designed or adapted for use for defence purposes as may be specified by the order.<sup>6</sup>

In Section 2 (2) a person who contravenes the provisions of an order under this section is guilty of an offence.

## **2. The Criminal Code Act**

Section 97 deals with-Disclosure of official secrets and states thus:

- (1). Any person who, being employed in the public service, publishes or communicate any fact which comes to his knowledge by virtue of his office, and which it is his duty to keep secret, or any document which comes to his possession by virtue of his office and which it is his duty to keep secret, except to some person to whom he is bound or communicate it, is guilty of a misdemeanor, and is liable to imprisonment for two years.
- (2). Any person who, being employed in the public service, without proper authority abstracts, or makes a copy of, any document the property of his employer is guilty of a misdemeanor and is liable to imprisonment for one year.

## **3. The Evidence Act**

Section 109 defines the following as public documents:

- (a). documents forming the acts or records of the acts:
  - (i). of the sovereign authority;
  - (ii). of official bodies and tribunals; and
  - (iii). of public officers, legislative, judicial and executive, whether of Nigeria or elsewhere;
- (b). public records kept in Nigeria of private documents.

Section 168 states that:

‘No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure’.

This is further amplified in Section 175:

No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned consents to their production.

## **4. The Public Complaints Commission Act**

This Act was established in 1975 with wide powers to inquire into complaints by members of the public concerning the administrative action of any public authority and companies or their officials, and other matters ancillary thereto.

Under section 5 of this Act, a commissioner shall have power to investigate either on his own initiative or following complaints lodged before him by any other person, any administrative action taken by-

- (a) any Department or Ministry of the Federal or any State Government;
- (b) any Department of any local government authority set up in any State in the federation;
- (c) any statutory corporation or public institution set up by any Government in Nigeria;
- (d) any company incorporated under or pursuant to the Companies and Allied Matters Act whether owned by any Government aforesaid or by Private individuals in Nigeria or otherwise however; or
- (e) any officer or servant of any of the aforementioned bodies.

Pursuant to these, the Act empowers any Commissioner in Section 3 (c) to 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 above.

Although this Act made adequate provision for its officers to have unrestricted access to any information that may be inquired in the course of their duty, such unrestricted access is disallowed in the disclosure of the Commission's result of investigation. It is stated categorically in Section 5 (5) that

- All Commissioners and all the staff of the Commission shall maintain secrecy in respect of matters so designated by reason of source or content, so however that a commissioner may, in any report made by him, disclose such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.

In Section 6, a commissioner is prevented from investigating any matter that is pending before a court of law or the National Assembly or any act purported to have been done in respect of any member of the armed forces in Nigeria or the Nigeria Police Force.

Furthermore, in Section 8 (1) any complaint lodged before the Commissioner shall not be made public by any person except a commissioner. Any person who contravenes the provisions of this subsection shall be guilty of an offence and shall be liable upon conviction to a fine of N5000 or imprisonment for a term of six months or both such fine and imprisonment.

The officers of this Commissioner enjoy immunity from legal process as stated in section 10 (2)-

Any report, statement or other communication or record of any meeting, investigation or proceedings which a Commissioner, officer or servant of the Commission may make in the exercise of his functions under this Act, shall be privileged in that its production may not be compelled in any legal proceedings if the

Attorney – General of the Federation certifies that such production is not in the public interest.

### **5. The Public Service Rule**

Under Rule 030416 of the PSR, every officer is subject to the Official Secrets Act .... and is prohibited from disclosing to any person, except in accordance with official routine or with special permission of government, any article, note, document or information entrusted to him/her in confidence by any person holding office under any Government in the Federal Republic of Nigeria, or which he/she has obtained in the course of his/her official duties. Similarly, every officer shall exercise due care and diligence to prevent the knowledge of any such article, note, document or information being communicated to any person against the interest of the Government.

- Furthermore, Rule 030402 (1) defines unauthorized disclosure of official information as a serious act of misconduct and the ultimate penalty for serious misconduct according to Rule 030407 is dismissal. The implication of dismissal for the officer is that he forfeits all claims to retiring benefits (Abioye, 2010).
- **Copying And Removal of Records**  
Rule 03417 of the PSR forbids a public officer from abstracting or copying official minutes, records or other documents except in accordance with official routine or with special permission of his Permanent Secretary / Head of Extra-Ministerial office.
- **Access To Personal Records**  
According to Rule 030418, the general rule in Nigeria is that no public officer should have access to official and secret records relating personally to him.
- **Publication And Public Utterances**  
Rule 030421 forbids a public officer except in pursuance of his/her official duty (even while on leave or leave of absence) to
  - (a). contribute to, whether anonymously or otherwise, publish in any newspaper, magazine or periodical or otherwise publish, cause to be published in any manner anything which may reasonably be regarded as of a political or administrative nature;
  - (b). speak in public or broadcast on any matter which may reasonably be regarded as of a political or administrative nature;
  - (c). allow himself / herself to be interviewed or express any opinion for publication on any question of a political or administrative nature or on matters affecting the administration, public policy, defence or military resources of the Federation or any other country.

In essence, these provisions were made to ensure that public officers are to be seen and not heard except when authorized in order to prevent vital information of government from being divulged through careless and unguarded utterances. They also confirm the

age-long administrative practice under which the civil service is regarded as neutral and anonymous (Abioye, 2010).

### **Concept of A Bill**

The three arms of government in Nigeria consist of the executive, legislature and the judiciary. The legislature is represented by the National Assembly (Senate and House of Representatives) at the Federal level and State House of Assembly at the state level. The legislature performs three key functions – law making, representation and oversight. Primarily it assumes its importance as a law – making body. As enshrined in Section 4 (2) of the 1999 constitution of the Federal Republic of Nigeria,

National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative list set out in Part I of the second schedule to this constitution.

At the state level, the State House of Assembly is empowered in Section 7 of the Constitution to

make laws for the peace, order and good government of the state or any part thereof. The power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and House of Representatives and, except as otherwise provided by subsection (5) of this section, assented to by the President.

A bill in the context of legislation has been described as an idea for a new law, or an idea to change or do away with an existing law (Hamalai, 2010). In the Nigerian context, a bill is the draft of a proposed law to be discussed by the National Assembly or by a State House of Assembly. As noted before, the power to make bills derives from Sections 58, 59 and 100 of the Nigerian Constitution. Such power is also subject to the legislative procedures under the Standing Rules / Orders of the Houses.

Proposal for a bill may emanate from a private citizen, business outfit, professional association / non-governmental group, special interest group or even a government unit. However, all bills must be sponsored by one or more legislators for it to be considered by the legislators. In Nigeria, bills enter the legislative process through the House of Representatives and Senate at the federal level and House of Assembly at the State level. At the Federal level, bills must pass through both chambers of National Assembly.

The bills drafted, considered and eventually passed into law cover various spheres of the economic, social, political and cultural lives of the Nigerian people.

### **Types of Bills**

As there are different sources of a bill so are there different types of bills. They include:

- Executive bill
- Members of the legislature bill (member's bill)
- Interest groups / Associations bill (also called private bills)
- Judiciary bills

Another way of categorizing bill is by focus which consists of:

- Public bills
- Private bills
- Hybrid bills

Finally bills may be classified according to financial implication. Thus there are

- Money bills (referring to definite matters in the constitution) S.80-84) and
- Ordinary bills (relates to matters not specified in the constitution).

### **Procedure for Passing a Bill in the National Assembly**

A Bill does not become law overnight. It undergoes several stages until it has received the approval of the legislature and finally assented to by the President. These stages will be discussed hereunder

#### **1 Receipt of Bill**

(a). Bill from the Executive and Judiciary. According to Hamalai (2010), draft bills from the Executive and Judiciary are forwarded with a covering letter to both the President of the Senate and Speaker of the House of Representatives. Upon receipt, a copy of the bill is sent by the Presiding officer of each House to the Rules and Business committees.

(b). Draft bills from Members of National Assembly. The member sponsoring the bill will forward it to the Senate President or the Speaker as the case may be. The Senate President or the Speaker will in turn send the bill to the Rules and Business committees for scheduling for First Reading and subsequent Readings.

#### **2. Notice Regarding Bills**

Bills from the Executive, Judiciary as well as Members' bill are expected to be published in the official Gazette.

#### **3. Readings / Stages of a Bill**

Every bill must receive three Readings before it is passed. Each Reading entails series of actions to be taken. For example, after the second Reading, the Bill must pass through a number of sub-stages before the Third Reading which is the Final Reading.

The various stages require appropriate time for scrutiny of the required activities.

#### **Clean Bill**

When a Bill originating in either the Senate or House of Representative has been read the third time, a copy of it (incorporating all amendments) called a "clean copy", signed by the Clerk and endorsed by the Presiding officer is forwarded by the clerk of the originating house to the clerk of the other House with a message desiring the concurrence of the House receiving the bill.

- Where the amendments proposed by one House are acceptable to the other House (when the Bill has passed through all the required stages in the other House), the clerk of the House to which the Bill had been sent retains the Bill and sends a message to the originating House indicating agreement to the bill without amendment.
- Where the Bill passed by one House is not agreed to by the other House or is agreed to with amendments to which the other House now seeks concurrence of

the originating House, but the originating House does not concur to the other House's amendments, a conference of both Houses is then requested by the originating House. That is, where both Houses disagree on some issues, a conference committee is convened.

### **Conference Committee**

A conference committee is set up where the second chamber refuses to remove the changes it made. The conference committee which is made up of representatives of both chambers attempts to reconcile the differences and presents its recommendations in the form of a conference report. If this committee reaches a compromise and both chambers adopt the conference committee report, the Bill is once again voted on for passage.

Essentially:

- Where both Houses agree in Conference and the conference reports are accepted by both Houses and all issues resolved, each House re-passes the Bill incorporating all conference amendments and endorsed by the Houses. Subsequently, all the original papers are transmitted to the clerk of the House in which the Bill originated for enrolment action.
- Where the two Houses fail to agree after a conference, then another conference committee may be appointed or the initiative dies in committee when the legislature adjourns.

Finally, when a bill has been passed in identical form by both Houses, a copy is prepared for the President's / Governor's assent as the case may be. The chief-Executive signs the Bill if he/she is satisfied (PARP, 2010)

### **Why Freedom of information Law?**

Freedom of information legislation is rules that guarantee access to data held by the State. They establish a "right to know" legal process by which requests may be made for government-held information, to be received freely or at a minimal cost, barring standard exceptions ([http://234next.com/csp/cms/sites/Next/News/National/5679987-146/a\\_bill\\_long\\_journal\\_...](http://234next.com/csp/cms/sites/Next/News/National/5679987-146/a_bill_long_journal_...))

Many countries exclude information in the domain of the private sector from their Freedom of Information bill. While some countries enact open meeting legislation which allows access to government meetings not just the records of them. In many countries, privacy or data protection laws may be part of the Freedom of Information legislation (<http://en.wikipedia.org/wiki/freedom-of-information-legislation>. (Accessed 1/10/2011). Most often Freedom of Information Laws does not allow disclosure of information that affects national security, defence and other matters that are deemed of national interest.

Over 85 countries around the world have implemented some form of freedom of information legislation. Sweden has the oldest which was enacted in 1766. Some African countries who have Freedom of Information law include South Africa, Mozambique, Liberia.

## **Salient Features of FOI Bill In Nigeria**

This Act seeks to provide a right of access to public information or records kept by government, public institution or private bodies carrying out public functions for citizens and on-citizens of the country.

This Act also seek to increase the availability of public records and information to citizens of the country in order to participate more effectively in the making and administration of laws and policies and to promote accountability of public officers. This bill provides in section 2 (1) that ‘every citizen of the Federal Republic of Nigeria has a legally enforceable right to, and shall, on application, be given access to any record under the control of a government or public institutions’.

It further states in 2 (2) that the applicant does not need to demonstrate any specific interest in the information being applied for.

Section 3 (1) made it mandatory that the head of every government or public institution to which this Act applies shall cause to be published in the Federal gazette a description of:

- (a) the organization and responsibilities of the institution including details of programmes and functions of each divisions, branch and department of the institution;
- (b) all classes of record under the control of the institution in sufficient details to facilitate the exercise of the right to access under this Act;
- (c) all manuals used by employees of the institution in administering or carrying out any of the programmes or activities of the institutions;
- (d) Documents containing final opinions including concurring and dissenting opinions as well as orders made in the adjudication of cases;
- (e) Documents containing substantive rules of the institution;
- (f) Documents containing statements and interpretations of policy which have been adopted by the institution;
- (g) Documents containing final planning policies, recommendations and decisions;
- (h) Documents containing factual reports, inspection reports, and studies whether prepared by or for the institution;
- (i) Documents containing information relating to the receipt or expenditure of public or other funds of the institution;
- (j) Documents containing the names, salaries, titles and dates of employment of all employees and officers of the institution;
- (k) Documents containing the rights of the state, the public, sub division of the state or a local government, or of any private person;
- (l) Documents containing the name of every official and the final records of voting in all proceedings of the institutions;
- (m) Files containing applications for any contract, permit, grant or agreement;
- (n) A list of reports, documents, studies or publications prepared by independent contractors for the institution;

- (o) Materials containing information relating to any grant or contract made by or between the institution or another government or public institution or private organization; and
- (p) The title and address of the appropriate officers or employees of the institution to whom requests for access to records under this Act should be sent, provided that the failure of any government or public institution to publish any information required to be published under this subsection shall not prejudicially affect the right of access to public records and information in the custody of such government or public institution as provided for under this Act.

To ensure the reliability and validity of the above information, the Act provides in Section 3 (2) that the institution shall publish an update record when changes occur. Government or public institutions to which this Act applies as provided in Section 3 (4) are all authorities whether executive, legislative, or judicial agencies of the federal Government together with all companies in which a Federal, State or Local Government authority has a controlling interest and all private companies performing public functions.

Application for access to a record under this Act shall be made in writing and such request shall provide sufficient detail to enable an experienced employee of the institution reasonable effort to identify the record (S.3 (4)). Response to such request shall commence not later than fourteen (14) working days from the date the application was received as provided in Section 5 (1).

Where access is denied, the head of the institution shall state in the notice the reason upon which the refusal was based and that the applicant has a right to have the decision reviewed by a court of competent jurisdiction (S.8 (1)).

Section 8 (2) further states that the notice of denial should contain the name of each person responsible for the denial and in Section 8 (3) the head of such institution is required to indicate whether such record exists in the institution.

### **Payment of Fees**

Payment of fees when access is granted according to Section 9 (1) (a) shall be limited to reasonable standard charges, for document search, or duplication, when records applied for is for commercial use. Same applies when records are not sought for commercial use and the application is made by an educational or non-commercial, scientific, research, or a representative of the news media S.9 (1) (b).

Section 9 (2) did provide that document shall be furnished without any charge or at a charge reduced below the fees established under Section 9 (1) (b) if disclosure of the information is in the public interest. That is, it will contribute significantly to the public understanding of the operations or activities of the government and not primarily in the commercial interest of the applicant.

The import of all fees prescribed in Section 9 is such that if any fee is to be paid, the rationale for such payment will be to offset only the direct cost of search, duplication, reproduction, review or transcription.

### **Destruction / Falsification of Records**

Under Section 10, it is a criminal offence punishable on conviction to a maximum of three (3) years imprisonment for any officer or head of government or public institution to which this Act applies who tries to either willfully destroy any records kept in his/her custody or attempts to doctor or otherwise alter same before they are released to any person, entity or community applying for it.

### **Classified Information Under the Act**

Certain categories of information are exempted from the general right of access. These include such information as: Defence/security matters, the conduct of international affairs, Law enforcement investigation, Trade secrets, Financial, commercial, technical and scientific information of economic value. These are information the disclosure of which could reasonably be expected to be materially injurious to the financial interest of the Federal Republic of Nigeria or any state or local government thereof, or the ability of the federal, State or Local Governments to manage its economy, or could reasonably be expected to result in an undue benefit to any person. These restrictions are contained in Sections 13-15 of the bill.

### **Personal Information**

The proposed Act under Section 16 empowers the head of a government or public institution to refuse to disclose any record applied for that contains personal information such personal information include:

- (i) files and personal information maintained with respect to clients, patients, residents, students, other individuals receiving social, medical, educational, vocational, financial, directly from Federal agencies or government or public institution;
- (ii) personnel files and personal information maintained with respect to employees, appointees or elected officials of any government or public institution or applicant for such positions;
- (iii) files and personal information maintained with respect to any applicant, registrar or license by any government or public institution cooperating with or engaged in professional or occupational registration, licensure or discipline.
- (iv) Information required of any tax payer in connection with the assessment or collection of any tax unless disclosure is otherwise applied for by state statute; and
- (v) Information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies.

However under Section 16 (2) the head of a government or public institution may disclose any record applied for that contains personal information if

- (a) the individual to whom it relates consents to the disclosure; or
- (b) the information is publicly available.

Section 16 (3) allows disclosure if it would be in public interest and if such public interest outweighs the protection of the privacy of the individual to whom such information relates.

### **Third Party Information**

Further restriction of public records are contained in Section 17 (1-4) such classified information include trade secrets and allied matters, contractual relationships, proposal and bids for contract, grants, agreement, information that may frustrate procurement or give an advantage to any person;

Others include information on product of environmental testing carried out on behalf of government or public institution.

However under Section 17 (4), access may be given if the disclosure will be for public good as it pertains to public health, public safety or protection of the environment.

### **Advice / Personal Opinion**

Section 18 (1) forbids the disclosure of information that contains preliminary drafts, notes, recommendation, memoranda and other records in which opinions are expressed or policies or actions are formulated. This also applies to legislative documents; except if that aspect will be expunged before the document is publicly cited.

### **Legal Practitioner / Client Privilege**

Under Section 19 access is denied to records that contain information on legal practitioner/ client privileges.

### **Course or Research Materials**

Section 20 is for records that contain course materials or research prepared by faculty members.

Under Section 23, the head of a government or public institution may refuse to disclose any record applied for that contains information pertaining to:

- (a) 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;
- (b) architects' and engineers plans for building not constructed with public funds, to the extent that disclosure would compromise security and
- (c) library circulation and other records identifying library users with specific materials.

### **Judicial Review**

Judicial review of administrative actions is provided for under Section 22 (1) and Section 22 (2). S.22 (1)

Any person who has been refused access to a record applied for, or part thereof may apply to the court for a review of the matter within thirty days after the head of

government or public institution has refused or is deemed to have refused the application, or within such further time as the court may either before or after the expiration of those days fix or allow.

S.22 (2) An application made under this section shall be heard and determined summarily.

During prosecution, the burden of establishing that the head of a government or public institution is authorized to refuse the disclosure of a record under this Act or a part thereof shall be on the government or public institution concerned.

The court may order disclosure of the denied access as contained in Section 27 (1-2)

- (i) if the court determines that the head of the government or public institution was not authorized to withhold access or
- (ii) where the head of the institution is so authorized, but the court nevertheless determines that the head of the institution did not have reasonable grounds on which he refused to disclose the record or part thereof;
- (iii) where the Court makes a findings that the interest of the public in having the record being made available is greater and more vital than the interest being served if the application is refused.

### **Records Not Covered by the Act**

Records not covered by this Act are contained in Section 28.

These include

- (a) published material or material available for purchase by the public
- (b) library or museum material made or acquired and preserved solely for public reference or exhibition purposes; or
- (c) material placed in the National Library, the National Museum or the non public section of the National Archives of the Federal Republic of Nigeria on behalf of any person or organization other than a government or institution.

### **Protection of Public Officers against Existing Laws**

Section 29 of the Freedom of Information bill in Nigeria made provision aimed at shielding public officers from a plethora of previous laws forbidding access to public documents. It states inter alia:

(1). Notwithstanding anything contained in the Criminal Code, Penal code, Official Secrets Act, or any other enactment, no civil or criminal proceedings shall lie against any government or public institution, or against any person acting on behalf of the government or public institution, and no proceedings shall lie against the Federal Government, State or Local Government or any institution thereof, for the disclosure in good faith of any record or any part of a record pursuant to this Act, for any consequences that flow from that disclosure, or for the failure to give any notice required under this Act, if care is taken to give the required notice. Nothing contained in the Criminal Code or the Official Secret Act shall prejudicially affect any public officer who, without authorization discloses to any person, any public record or information which he reasonably believes to show-

- (a). a violation of any law, rule or regulation;

- (b). mismanagement, gross waste of funds, fraud, and abuse of authority; or
- (c). a substantial and specific danger to public health or safety notwithstanding that such information was not disclosed pursuant to the provision of this Act.

(3). No civil or criminal proceedings shall lie against any person receiving the information or further disclosing it.

In Section 30 further clarification is made for document which though may be classified as security document but not listed as such in Sections 14, 15, 16, 17, 18, 19, 20 or 21. Section 30 (1-3) states that such classification does not preclude such documents from being disclosed upon application except where the head of the institution deem it so.

### **Submission of Reports**

In Section 31, provision is made for sending of reports on or before February 1 of each year by each government or public institution. The essence of this report is to monitor progress and ensure compliance. Such reports must include:

- the number of applications such institutions turned down.
- number of appeals made and the reason adduced for denial.
- description of court decisions that upheld the denials made by the institutions as well as concise description of the scope of any information withheld.
- number of applications awaiting action as at 31<sup>st</sup> October of proceeding year and the median number of days such applications had waited.
- the number of applications so far received and the number processed.
- Median number of days it had taken the government or public institution to process different types of application
- total amount of fees collected to process all such application.
- the number of full-time staff of the Government or public institution devoted to processing applications for records, or the total amount expended by the Government or Public institution for processing such applications.
- S.31 (2) Each government or public institution shall make its report available to members of the public, even through online and other electronic means.
- This report shall be made to the Attorney General of the Federation who shall in turn notify the National Assembly not later than April of same year and also ensure that such reports are available by electronic means.
- the AG of the Federation shall develop reporting and performance guidelines in connection with this report and may also establish additional requirement for such reports as he may determine.
- such report shall include a description of the effort taken by the Ministry of Justice to encourage all government or public institutions to comply with this Act.

### **The Legislative History of FOI in Nigeria**

The idea of a FOI law for Nigeria was conceived in 1993 by three different organizations, working independently of each other. The organizations, Media Rights Agenda, Civil Liberty Organization and the Nigerian Union of Journalists subsequently agreed to work together on a campaign for the enactment of a Freedom of Information Act. The "Draft

Access to Public Records and information Act” produced by Media Rights Agenda in 1994 became the basis for further discussion and debates (<http://11234next.com/cps/cms/sites/Next/News/Natioanl/5679987-146/9-bills-long-journey> accessed /3/19/2011).

The FOI bill was first submitted to the National Assembly in July 1999 as a non-member bill by the Media Rights Agenda, a non governmental organization (Ogala, 2011). The document which had 34 sections was denied passage at the House of Representative as well as the Senate. It was recommitted in 2003 and was eventually passed in 2007 towards the closing session of that Parliament. The then President, Olusegun Obasanjo refused to sign it into law, citing national security infringement.

The bill was reintroduced in the National Assembly in 2007. It was sponsored by Abike Dabiri-Erewa, a former journalist. The passage of this bill has lingered since 2007. In February this year, the House of Representative eventually passed this bill which was renamed the “Right of Information Bill, 2011”. The Senate passed its own version in March. Each chamber of the National Assembly passed a different version of the bill hence the need for conference committee where areas of differences will be harmonized before the President’s assent.

### **Public Outcry Against the Delay**

Part of the reasons adduced as impediments to accountability and transparency was the fact that the nation lacks an enabling law that gives the media and the citizenry unrestricted access to information on the dealings of government (Iriekpen & Obi, 2011). So one of the components of bargains put forward by the civil society and other pro-democracy groups at the advent of democracy was for an act that empowers the media and the people to hold their leaders accountable through having access to what happen within government circles-what comes in and goes out.

Commendable effort has been made by various interest groups towards the passage of this bill. These pressure groups include the Nigerian Labour Congress, Nigeria Union of Journalists, Nigerian Guild of Editors, Freedom of Information Coalition, Media Rights Agenda and other civil society groups. They have mounted a sustained campaign to make Nigeria join the league of other civilized societies by passing the bill.

### **Why the Long Delay in the Passage of FOI bill in Nigeria?**

The long delay in the passage of FOI bill in Nigeria can be attributed to the following:

#### **1. Fear of the Press**

There is a widely-held view especially at the government circle (including the National Assembly) that FOI is a media bill which if passed into law will give journalists unchecked powers to abuse and misuse information that comes into their hands. According to Hon. Abike Dabiri (2008), there is a misconception that it is a bill that will make the press so powerful. Thus the Nigerian government is wary of enacting a law that may turn out to be its nemesis and a handy weapon in the arsenal of its enemy.

**2. Incompetence Exposed**

Those in government are fearful that a FOI act will enable the governed to be able to ascertain incompetence, wastefulness and corruption in government. Similarly, those in society are uncertain because they are unsure of how the provisions of the FOI will be implemented in Nigeria polity where instances of disregard of individual basic rights under laws by institutions and law enforcement agents are rife and where costly litigation may be required to enforce such rights.

**3. Apathy Among Legislators \**

When a bill is introduced in the National Assembly, the expectation is that support would be mobilized for it. Sometimes an interest group is expected to shore up support for the Bill. When the reverse is the case, the Bill becomes an orphan and its journey to passage may become protracted. Until recently, the FOI bill has not enjoyed the blessing of many members of the National Assembly.

**4. High Rate Turnover of Legislators**

The life history of a bill if not passed into law is halted after every legislative session. Even when the interest in the bill is sustained at the commencement of a new session, it has to go through the same process as before since not all the law makers in the present house participated in the previous debate. Such is the case with FOI bill in Nigeria.

**5. Assent to Bills**

When the National Assembly passes a bill, it is still not a law until the President signs it. Where this assent is withheld, the bill may be sent back to the National Assembly; who may decide to put it to vote. Where a two third majority votes in favour of the bill, it becomes a law, if not the bill either dies a natural death or awaits another torturous journey. That was what happened between 2003-2007.

**6. Concurrent Requirement for Bills**

Before assent is given by the president, both chambers of the National Assembly must pass a harmonized version of the bill. Where there is disagreement, it helps to prolong the passage of the bill. Presently, the FOI bill passed in Nigeria by the Senate and House of Representative differ hence the need for a conference committee before the President' assent.

**Weakness / Lapses in Right of Information Bill in Nigeria**

A cursory look at the provisions of this bill will reveal some obvious lapses. In Section 15, the bill excludes economic and defence matters from the areas to which the public might have full access. The government shall refuse access to “(a) trade secret, financial, commercial or technical information that belongs to the government that has substantial economic value or is likely to have substantial value; and (c) proposal and bids for any contract, grants or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person.

- (1) Adhering strictly to this provision means that Nigerian would have no right to know exactly how the money budgeted annually is spent, who and who are getting the contracts, and the parameter used in allocating resources.
- (2) Since information concerning the military remains a classified one the army is shielded from public scrutiny. This can encourage corruption and impunity.
- (3) The eleven years legislative struggle in the passage of this bill has not ended. The passage of the bill is yet to be harmonized and assented to by the President even when the tenure of the present parliament will end in May. Until this bill is signed into law and made public, Nigerians cannot for sure know whether it has satisfied the yearnings of the masses.
- (4) The bill made provision for legal action when access is denied. The impracticability of this facility stares one in the face. Access to justice in Nigeria is not an easy one. Similarly with the frequent industrial action all over the country, getting quick relief from the court may not be all that easy.
- (5) Provisions made to ensure access to information in the bill are laudable but it has far reaching implication. It will entail increase in labour force, improving the facilities of the government and public institutions, setting up of monitoring team that will monitor progress and compliance.
- (6) No provision is made for periodic review of the provisions of the FOI law.

### **RECOMMENDATION**

Based on lapses so far x-rayed, the following recommendations were made:

1. Nigeria should borrow a leaf from India which has successfully transferred most of its record into electronic format. There has to be a major ICT initiative throughout the country; while steady supply of electricity is an imperative.
2. Public awareness – Not every citizen of Nigeria is aware of the rights inherent in the Right to Information Bill. There is need for sensitization of the citizenry.
3. Manpower Development-By time we have the law, there should be trained government officials who will be responsible for handling FOI requests.
4. The overriding influences in the disclosure of any public information/record should be public interest even if such document is classified.
5. The denial of access to public document may result in legal action. Consequently, litigation may increase with time. A special court should be created to handle all such cases. This is to ensure speedy disposal action.
6. Effort should be made by all stake holders to ensure that the passage of this bill do not exceed this legislative session which will end on 29th May.
7. The government should be proactive in the implementation of the provisions of this law. This it can do by setting up a monitoring committee. The monitoring committee should be a creation of the law.
8. To check abuse, the offence of libel may be made a criminal offence so that people become conscious of how they mismanage information.
9. Provision should be made for periodic review of every provision of the law.

10. Once the bill finally becomes a law, a plan of action should be put in place to review, amend or repeal all existing laws which impede access to information. New laws should be made to align with the provisions of Right to Information Law.

### CONCLUSION

Corruption thrives in secrecy. Passage of Freedom of Information bill in Nigeria which started in 1999 is one single bill with the longest legislative history. As at 29<sup>th</sup> May, 2011, this bill is still before the National Assembly. If passed into law, it will give every Nigerian a legal right of access to information, records and documents held by the government or its agency. There are some exemptions in the provisions of the new law. But these exemptions are in recognition of the fact that no government no matter how liberal will allow access to all kinds of information in its custody without some interest being jeopardized. Be that as it may, the continued delay in the passage of the bill has continued to attract mixed reaction from the entire Nigerian public. Both the media and other civil society groups have mounted a sustained campaign to ensure that this bill is passed into law.

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