Freedom of Information Law Enforcement in Nigeria: Emerging Issues from Court Cases

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Abstract

The promotion of access to information has become an entrenched feature of most democratic societies. This is against the backdrop of the appreciation of the value of information as a veritable tool for fostering transparency and accountability in governance. Freedom of information legislation has been enacted across the world to guarantee and promote the right of access to information and it has become the hallmark of a democratic society. In Nigeria, the Freedom of Information (FOI) Act was enacted in May 2011 after a long and tortuous sojourn in the Nigeria's federal legislative houses of a bill erroneously perceived as the Media Bill probably because the struggle for its passage was championed by Media Rights Agenda and some other civil rights societies in the country. The euphoria that greeted the enactment of the law having subsided, attention shifted naturally to the implementation and enforcement of the provisions of the law. Since its enactment, cases have arisen in Nigerian courts bordering on the exercise of the right of access guaranteed by the law in situations where applications for record or information have been refused. This study is aimed at navigating through court decisions in some of the cases instituted to challenge denial of access to information under the FOI Act with a view to underpinning the issues raised and canvassed on the relevant provisions of the law. A content analysis of the decisions will be undertaken and the pronouncement of presiding judges on the issues canvassed highlighted. Based on the issues arising and the position of the court on them, recommendations will be made that could impact positively on the implementation of the FOI Act in Nigeria.

Key words: Freedom of information, Freedom of information law enforcement, Court cases, Legal issues, Nigeria

Introduction

Access to information is a fundamental concept in that it facilitates decision making. Access to information particularly in the public sector is critical to accountability, transparency and good governance, hence the promotion of access to information across the world. It has been asserted that free access to information preserves democratic ideas (Mason, 2008). Freedom of information has, therefore, become one of the hallmarks of democracy. The primary goal of freedom of information in most countries is to engender openness in governance. For instance, the UK Freedom of Information Act has been viewed as a culmination of almost 50 years debate on the rights of individuals to have access to information on how they are governed or how the decisions affecting them are taken (Shepherd & Ennion, 2007). The US Freedom of Information Act, one of the oldest freedom of information legislations was signed into law in 1966 by President Lyndon B. Johnson with an expression of pride and fulfilment that the United States has become an open society in which the right to know is appreciated and protected (SourceWatch, 2008). Freedom of information legislation, according to Crooks (2012), "is driven by the concept that government and public bodies hold information for the public good and what they do is the public's business, done on the public's behalf".

The Freedom of the Press Act of 1766 is reputed to be the first freedom of information legislation (Katuu, 2008). In Finland, the Act on the Openness of Public Documents was enacted in 1951 and through its provisions provided for the right of access to public documents to engender openness in governance.

In Africa, the Promotion of Access to Information Act 2000 of South Africa is the first freedom of information legislation in the continent. This was followed by Zimbabwe's Access to Information and Privacy Act 2002 and Uganda's Access to Information Act 2005 which came into effect in 2006. Liberia became the first country in West Africa and the fourth in Africa when President Ellen Sirleaf signed the Freedom of Information Act 2010 for the country.

The road to a freedom of information (FOI) legislation in Nigeria was long and tortuous. Championed by the Media Rights Agenda and Civil Liberties Organisation and the Nigerian Union of Journalists, the FOI bill acquired the notoriety as the longest staying bill in Nigeria's National Assembly. The harmonised bill was eventually passed on 26 May, 2011 and signed by President Goodluck Jonathan on 28 May, 2011, thus concluding the enactment of the Freedom of Information Act 2011 (hereinafter referred to as the "the Act").

The objectives of the Act are contained in its long title which reads:

An Act to make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences of disclosing certain kinds of official information and establish procedures for the achievement of those purposes and; for related matters.

The Act establishes the right to know and the procedure for accessing public records and information. Public record or document has been defined in the Act to mean "a record in any form having been prepared, or having been or being used, received, possessed or under the control of any public or private bodies relating to matters of public interests..." (Section 31).

Salient Provisions of the Act

The Act establishes "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 however described" (Section 1(1). An applicant is not bound to show any specific interest in the information applied for. He /She is conferred with the right to institute proceedings to compel compliance with the provisions of the Act by the public institution concerned.

The Act imposes on a public institution the duty to record and keep information of all its activities, operations and business. In realisation of the importance of good records management practices to access to information, the Act also makes it mandatory for a public institution to ensure proper organization and maintenance of the information in its custody in a manner that facilitates public access. The Act makes a list of information which a public institution is required to publish and widely disseminate and make available to members of the public through various means. The information required to be published is to be updated and reviewed periodically. A person having the right of access under the Act may institute proceedings in the court to compel compliance by a public institution.

The question is what are public institutions? Section 2(7) provides the answer when it defines public institutions as:

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 and

private companies utilizing public funds, providing public services or performing public functions.

This definition is necessary and important to clear the doubt as to which institutions or bodies owe the duty under the Act to make record or information in its custody accessible to those who have the right to know under the Act.

The Act stipulates the procedure for requesting for record or information. According to Section 3 of the Act, an application for access to a record or information under the Act shall be made in accordance with Section 1 of the Act. The Act permits an illiterate or a disabled applicant to apply through a third party. An oral application can be made for record or information. Such application is to be reduced into writing by an authorised official of the public institution to whom it has been made and a copy of the written application provided to the applicant.

A public institution to which an application for record or information has been made is to react to the application within seven days after receiving it. The record or information requested for is either made available or a written notice of denial of access stating the reasons for the denial given to the applicant (Section 4). Where a public institution receiving request is of the view that another public institution has greater interest in the information, the application and the information (if necessary) must be transferred to the institution with greater interest within three days but not later than seven days after the receipt of the application. A written notice of such transfer is to be given to the applicant by the transferring institution. In addition, the applicant is to be informed of his right under the Act to have the decision to transfer the application reviewed by the court. Section 5 (3) gives the instances in which a public institution would be said to have "greater interest" in information. These are (a) when the information was originally produced in or for the institution, or (b) when in the case of information not originally produced in or for the public institution, the institution was the first public institution to receive the information.

The Act makes provision for extension of time not exceeding seven days to react to an application for information. According to Section 6, time limit extension is allowed when (a) the application is for a large number of records and meeting the original time limit would unreasonably interfere with the operations of the public institution or (b) consultations are necessary to comply with the application which cannot reasonably be completed within the original time limit.

A public institution refusing to grant access to a record or information applied for owes the duty to state in the notice of denial to the applicant the grounds for refusal, the specific provision of the Act relating to the refusal as well as the applicant's right to challenge and have the decision to refuse access reviewed by a court. Notification of denial of access must also contain the names, designation and signature of each person responsible for the denial. The public institution is also required to indicate whether the record or information applied for exists. Failure of a public institution to respond to application within the time limit is to be deemed to be refusal of access. Wrongful denial of access when established amounts to an offence for which the defaulting officer or institution is liable on conviction to a fine of N 50,000.

The Act makes provision to safeguard records and their integrity as it stipulates in Section 10 that "it is a criminal offence punishable on conviction by the Court with a minimum of 1 year imprisonment for any officer or head of any government or public institution... to wilfully destroy any records kept in his custody or attempt to doctor or otherwise alter same before they are released" to an applicant.

Exemptions to the Right of Access

The right of access to record or information is never absolute as there are always equally important interests to take care of. As it is the case with the FOI legislations of other countries, the Act makes for exemptions to the right of access. They are contained in Section 11, 13, 14, 15, 16, 17 and 19 of the Act.

Exemption of International Affairs and Defence- The Act in Section 11 stipulates that a public institution may deny an application for any information the disclosure of which may be injurious to the conduct of international affairs and the defence of the Federal Republic of Nigeria. It, however, goes to stipulate that there shall be no denial where the public interest in disclosing the information outweighs whatever injury that disclosure would cause.

Exemption of Law Enforcement and Investigation- Provision is made in Section 12 to grant a public institution the discretion to deny an application for any information containing records compiled by any public institution for administrative or law enforcement purpose to the extent that disclosure would cause certain injuries listed in Section 12 (a) (i) to (vi). The Section also exempts information the disclosure of which could reasonably be expected to be injurious to the security of penal institutions. In the same vein, a public institution may deny an application for information that could reasonably be expected to facilitate the commission of an offence.

Exemption of Personal Information- Section 14 (1) of the Act provides that subject to subsection (2) of the Section, a public institution must deny an application for information that contains personal information. The categories of information exempted are listed to include personal information maintained with respect to clients, patients, residents, students or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly form public institutions. Personal files and personal information maintained with respect to employee, appointees or elected officers are also exempted. However, Section 14 (2) mandates a public institution to disclose personal information with the consent of an individual to when it relates or when the information is publicly available. In addition Section 14(3) permits disclosure of information if it is in the public interest and the public interest in the disclosure of such information clearly outweighs the protection of the privacy of the individual to whom the information relates.

Exemption of Third Party Information- The Act in Section 15 allows denial of an application for information containing 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 may cause harm to the interest of the third party. A person or business may, however, consent to disclosure. The Act mandates disclosure if it would be in the public interest as it relates to public health, public safety or the protection of the environment and the public interest in the disclosure clearly outweighs the interests denial of access would have protected.

Exemption of Professional and other Privileges- Section 16 stipulates that a public institution may deny an application for information that is subject to the following privileges:

(a) Legal practitioner-client privilege;
(b) Health workers-client privilege;
(c) Journalism confidentiality privilege
(d) Any other professional privileges conferred by an Act.

Exemption of Course or Research Material- Section 17 grants a public institution the discretion to deny an application for information which contains course or research materials prepared by faculty members.

However, Section 18 of the Act makes provision for severance of part of information exempted from disclosure. To this extent a public institution is required to disclose any part of the information that does not contain exempted information.

Denial by a Public Institution to Disclose Records -The Act in Section 19 permits a public institution to deny an application for information pertaining to test, scoring and examination data; architects 'and engineers' plans for buildings not constructed in whole or in part with public funds, and for buildings constructed with public funds, to the extent that disclosure would compromise security. The Section also grants exemption to library circulation and other records identifying library users with specific materials. This provision is perhaps in conformity with the ethics of information provision and professional conduct in library and information service field wherein the users are protected against being unduly monitored in their use of library materials.

The Act, however, makes provision in most of the exemptions that notwithstanding anything contained in them, an application for information shall not be denied where the public interest in disclosing the information outweighs whatever injury that disclosure would course. Although the court will ultimately bear the responsible of pronouncing on what constitutes overriding public interest, Caleb (2014:13) opined that the "degree of "public interest" depends on the importance of the information at issue to the individual, a cross-section of society, or society as a whole... [and] does not mean "what the public is interested in" or curious about." What will amount to public interest is, therefore, a question of fact, each case to be decided on its merit.

In any case, the Act, according to Section 26, does not apply to certain materials. These are:

(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;
(c) Material placed in the National Library, National Museum or 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 public institution.

Freedom of Information Law Enforcement

The Act anticipates the need and makes provisions for the judicial review of the decision of a public institution denying access to information applied for. Section 20 of the Act provides an applicant the right to apply to the Court for the review of the matter. The proceedings for a review are to be instituted by an application within 30 days after his/her application for information is denied or deemed denied or within such further time as the Court may allow. According to Section 31 which is the interpretation section of the Act,

application for judicial review may be brought in a High Court of Federal High Court. By virtue of Section 21 of the Act, an application for judicial review is to be heard and determined summarily.

Methodology

Since its enactment in 2011, the provisions of the Act have been tested in court. The methodology for this study was, therefore to review some of the cases bothering on the enforcement of the provisions of the Act particularly cases in which the decisions of public institutions to deny application for information were challenged in court. The limitation, however, was the difficulty experienced in obtaining copies of the full rulings of the Court in most of the cases considered. In Nigeria, judgments of the High Court and Federal High Court are rarely reported in law reports. Though public documents and publicly pronounced, the process of obtaining copies of judgments of the lower Courts, particularly for a person who is not a party in a case, may sometime be cumbersome. As such, the researcher relied mainly on the media reports of most of the cases considered as well as the internet sources. Analysis of some of the cases in papers and journal articles were also examined.

Review of Cases

The first test case of the enforcement of the provisions of the Act was instituted in July 2011 by Mr. Olasupo Ojo for himself and on behalf of the Committee for Defence of Human Rights (CDHR) against the Economic and Financial Crimes Commission (EFCC) before the Federal High Court in Lagos (Suit No. FHC/L/CS/784/2011). The Applicant in the suit sought an order of mandamus directing the EFCC to make available to him information on the allegation that the leadership of CDHR collected N 52 million from a suspect being investigated by the EFCC. The Applicant had earlier through his solicitor's letter dated 7 June 2011 applied for the information but the EFCC was said to have ignored the application. Apparently pre-empting the defence of the Respondent, the Applicant in his supporting affidavit stated, inter alia, that "the information I requested for do not form part of records compiled by the Defendant / Respondent for law enforcement purposes." The trial judge, Honourable Justice Binta Nyako ordered the EFCC to make the information available to the Applicant.

In the case of Legal Defence and Assistant Project Versus the Clerk of the National Assembly (Suit No. FHC/ABJ/CS/805/2011), the Applicant (LDAP), a non- governmental organization applied to the Respondent for information relating to budgetary allocations to

members of the National Assembly for constituency projects between 2011 and 2013. The Respondent having failed to grant the request, the Applicant applied to the Federal High Court Abuja for an order of mandamus to make the information available. The defence of the Respondent was that he had no knowledge of the information sought but rather referred the applicant to the Federal Ministry of Finance and the Appropriation Acts. In the ruling of the trial judge, Honourable Justice Balkisu Bello Aliyu, the Respondent was ordered to provide the requested information within seven days.

In F.O.C. Uzoegwu Esq. Versus Central Bank of Nigeria and Attorney-General of the Federation (Suit No. FHC/ ABJ/CS/1016/2011) instituted before the Federal High Court, Abuja, the Applicant filed an Originating Summons to challenge the failure of the first Respondent (Central Bank of Nigeria) to respond to his request for information on the amount payable to the Governor, Deputy Governor and Directors of CBN. The main issue raised in defence by the Respondents and considered by the Court was that the requested information was personal information and that it is protected by trade and commercial secrets. The court (per Honourable Justice Balkisu Bello Aliyu) held that "the salaries of the Governor of the CBN and Deputy Governors and Directors of the Bank cannot, by any stretch of imagination be trade secrets contemplated by... Section 15 (1) of the Act. On the question of whether the requested information which is information relating to the salaries of high-level officials of CBN was personal information under Section 14(1) of the Act, the court reasoned that it would be illogical to regard the "payments of public officers from the public funds for their services to the public" as personal information. Besides, the court also founded on the overriding public interest under Section 14(3) of the Act and ordered that the information be disclosed.

The case of Mr. Boniface Okezie Versus Central Bank of Nigeria (Suit No. FHC/L/CS/494/2012) instituted by Mr. Boniface Okezie against Central Bank of Nigeria (CBN) before the Federal High Court Lagos was for the order of the Court to compel the CBN to account for the forfeited assets of Mrs. Cecilia Ibru, the former Managing Director of Oceanic Bank. The trial judge, Honourable Justice M.B. Idris held that the CBN, being a public institution, was duty bound under the Act to provide details of such information and that the refusal to make the information public upon request by Mr. Okezie was unlawful. The other aspect of the request relating to the details of the legal fees paid to the lawyers involved in the recovery of properties from Mrs. Ibru was, however, refused, the judge holding that the information fell within the purview of client/solicitor relationship.

Another case, Boniface Okezie Versus Attorney-General of the Federation and the Economic and Financial Crimes Commission (Suit No. FHC/L/CS/514/2012) was instituted by Mr.Okezie against the Attorney-General of the Federation and the Economic and Financial Crimes Commission (EFCC) in the Federal High Court, Lagos. Mr. Okezie in January 2012 requested from both public institutions certain pieces of information relating to their operations. Both institutions acknowledged the receipt of the requests but failed to comply, hence the application to compel disclosure. The argument of the EFCC was that the Federal High Court Lagos lacked territorial jurisdiction in view of the fact that the cause of action arose in Abuja coupled with the fact that its head office was situated in Abuja. In addition, the issue of want of Locus standi on the part of the Applicant to institute the action was raised. It was also argued that disclosure of the requested information would infringe state security and the right of lawyers in relation to client and solicitor relationship.

In his ruling delivered on 22 February 2013, the trial judge, Honourable Justice M.B. Idris rejected the argument that the court lacked territorial jurisdiction, saying that rules of civil procedure are not "mandatory but directory". On the issue of the Applicant's locus standi, it was held that it is not necessary for a plaintiff "to demonstrate any specific interest in the information being applied for" to have the standing to sue. The court also considered the exemptions of national security and legal practitioners/ client privilege raised. It noted that while some of the information requested threatened national security, the EFCC still owed the duty of responding to the request. While acknowledging the exemption of legal practitioner/client privilege under the Act, the court held that the EFCC failed to provide specific information on the nature of the relationship. It however, held that disclosure of fees paid by the defendants to their legal practitioners would interfere with the contractual or other negotiations of a third party.

In 2012, the Public & Private Development Centre (PPDC) instituted a legal action for itself and on behalf of the Nigeria Contract Monitoring Coalition (Suit No. FHC/ABJ/CS/582/2012) in the Federal High Court, Abuja against Power Holding Company of Nigeria (PHCN) Plc and the Honourable Attorney-General of the Federation. The case was filed when the Respondents failed to furnish the Applicant with the documents / information sought in its letter of 30 August 2012 on the ground that the failure amounted to wrongful denial of information under the Act.

The sole issue submitted for determination in the case was whether the Applicant has proved its entitlement to the relief sought. The Applicant's counsel argued that it had complied with the relevant provisions of the Act and was therefore, entitled to the reliefs

sought. The first Respondent's counsel opposed the granting of the application on the ground that the information sought by the Applicant was a copy of the bid evaluation report of the technical subcommittee of the Tender's Board for the procurement and it involved a third party winner of the bid. Counsel argued further that releasing the information to a third party (the Applicant) would affect the contractual relationship between the parties to the contract, citing the exemption provided for in Section 15 (1)(b) of the Act. In his reply on the point of law, the Applicant's counsel stated the circumstances in which a public institution is justified to deny information under the said section of the Act. It was argued that three conditions must be present which are that: (!) the transaction must still be at the negotiation stage; (2) a third party must be involved; and (3) the disclosure of the information could reasonably be expected to interfere with the contractual or other negotiations of a third party. The court agreed with the argument of the Applicant's counsel that negotiations had been concluded and the contract awarded and that "the disclosure of information sought by the Applicant cannot by any stretch of the imagination reasonably be expected to interfere with any contractual or other negotiations of the Contractor, i.e. third party"(per Ademola, J. at p.7)

The case of Public & Private Development Centre Ltd / GTE Versus Federal Ministry of Finance and the Honourable Minister, Federal Ministry of Finance (Suit No. FHC/ABJ/CS/856/13), was instituted in the Federal High Court Abuja for wrongful denial of information under the Act. The action was instituted when the Respondents failed to grant the Applicant the information and documents applied for in its letter of 30 October 2013.

The issue for determination in the case was whether on the basis of the affidavit evidence of the Applicant and the Respondents, the court should exercise its discretion in favour of the Applicant and grant the orders sought in the circumstance. The Respondents' argument was that they did not have any document that matched the date stated by the Applicant. It was further stated that the document in their possession which was a loan agreement executed between the Federal Government of the Federal Republic of Nigeria and the Chinese Exim Bank on the execution and completion of the Abuja Light Rail Project contained trade secrets of the Chinese Exim Bank and ought not to be disclosed. The Applicant's counsel, replying on point of law, argued that the Respondent did not outrightly deny the existence and possession of the document requested for by the Applicant. The law, according to him is to effectively deny a fact deposed to in an affidavit and not to just make a sweeping denial of facts in a counter-affidavit. The Court agreed that the Respondents merely denied the date stated by the Applicant and not being in possession of the agreement. It did

not agree that a mere difference in the dates of the agreement should vitiate the Applicant's access to it.

On the argument that the document contained trade secrets, the court having perused the document in question submitted to it by the Respondent expressed the opinion that it was a simple loan agreement between the Federal Government of Nigeria and the Chinese Exim Bank and that it did not contain any trade secrets and commercial or financial information that are proprietary, privileged or confidential as envisaged by Section 15 (1) (a) of the Act. Consequently, the Respondents' argument was rejected and the Applicant's application granted.

Perhaps the most fundamental issue arising from some of the cases on the Act is its applicability in the States of the federation. The issue was raised in a number of cases with the courts giving conflicting judgements. On 31 October 2013, Honourable Justice S.A. Akinteye of High Court No. 5, Ibadan in Yomi Ogunlola and Another Versus Speaker, Oyo State House of Assembly and 3 others (Suit No. M/332/12) held that the Freedom of Information Act being an Act of the National Assembly does not need to be domesticated by the 36 state Houses of Assembly before it becomes law in the state.

By a letter dated July 23, 2012 written to the Clerk of the Oyo State House of Assembly, the Applicant, Mr. Yomi Ogunlola, an Ibadan-based human rights activist requested for information as to the source of funding for the trip of the legislators' wives to London in view of the fact that the wives were not public or civil servants. The Clerk in a reply to the letter dated July 25, 2012 stated that the Freedom of Information Act, 2011 under which the request for information was made was not yet applicable in Oyo State since it had not been domesticated in the State. It was this reply that prompted the institution of the legal action.

Three issues were formulated for determination in the case as follows:

1. Whether any Act of the National Assembly made in furtherance of its power under Section 4 (2) and 4 (4) (b) of the 1999 Constitution (as amended) to make laws for the peace, order and good government of the Federation or any part thereof requires States' domestication to be applicable in the respective states of the Federation?
2. Whether the Freedom of Information (FOI) Act, 2011 intended to ease access inter alia to public record and information should be construed restrictively as applicable only to Federal Government institutions?

3. Whether in constructing Section 2 (1) of the Freedom of Information Act, 2011 the 3rd Respondent is right to hold that the Freedom of Information Act 2011 is inapplicable to Oyo State same not having been domesticated?

After listening to arguments by both counsel in the case, Justice Akinteye held that the Act was enacted by the National Assembly to be operational throughout Nigeria.

In March 2014, Justice D.V Agishi of the Federal High Court, Enugu also held the Act to be applicable across all the states of Nigeria. The Civil Liberties Organization had instituted a suit against the Commissioner for Health, Enugu State, Mr. George Eze to seek an order of mandamus directed at the Commissioner, having failed to grant the organization's request for the records and documents relating to the contract awarded for the building and completion of the Diagnostics Centre, Enugu located at Old Trade Complex, Abakaliki Road. The defence of the Respondent was that the state government had no obligation under the Freedom of Information Act to provide the information requested for as Enugu State was yet to adopt the Act or enact same as its law. It was also argued that the Federal High Court had no jurisdiction to entertain the suit. The court rejected the argument, saying that it had the jurisdiction to entertain the suit and that the Act is applicable to both the federal and state institutions.

However, a contradictory judgment was delivered by Honourable Justice Okon Abang of the Federal High Court, Lagos on 31 October 2014 when he held that the Freedom of Information Act, 2011, being an enactment of the National Assembly is only binding on the federal government and its agencies. The decision was given in a suit filed by Legal Defence and Assistance Project Limited / GTE against the Attorney-General and Commissioner for Finance of Lagos, Imo, Rivers, Abia, Akwa Ibom, and Delta States. The suit was instituted as a result of the refusal of the Respondents to meet the Applicant's request under the Act for information on the bond raised by the states in the Capital Market.

Two States (Lagos and Akwa Ibom) contested the suit and argued that the Freedom of Information Act, being a federal enactment could not be made to be binding on them. In addition, it was argued that an applicant for an order of mandamus must show how the refusal of such would affect him more than other members of the society. Justice Abang upheld the arguments of the Respondents and held that the court lacked jurisdiction to entertain the matter in issue.

Findings and Discussion

An analysis of the cases considered in the study has revealed the emergence of the following salient issues in the judicial interpretation of the provisions of the Act:

1. Whether requested information contains personal information.
2. Whether requested information contains trade secrets.
3. Whether an applicant for information under the Act needs to demonstrate any specific interest in the information being applied for.
4. Whether the Act is applicable to the states of the federation.

One of the exemptions to the right of access to information is continued in Section 14(1) of the Act which empowers a public institution to deny an application for information containing personal information. A list of information exempted under the subsection is given. The list, however, is not exhaustive going by the phrase "...information exempted under this subsection includes" used in the subsection. Whenever the question as to whether a requested information contains personal information arises, the court can, therefore invoke the discretionary power conferred by section 22 of the Act to examine the information to arrive at a decision.

Even when a requested information is adjudged to be containing personal information, Section 14(2) of the Act makes it mandatory for a public institution to disclose the information if the individual to whom it relates consents to the disclosure or the information is publicly available. Having or establishing the consent of such individual may, however, be a difficult task. The court, in appropriate cases, may also order the disclosure of personal information, taking into consideration the provision of Section 14(3) dealing with overriding public interest.

As for information containing trade secrets which a public institution is empowered to deny access to under Section 15(1) of the Act, the court can, again, exercise the power of examination of the information granted in Section 22 of the Act to determine whether, in actual fact, the information in question contains trade secrets. In any case, the overriding public interest provision of Section 15(4) of the Act may also be invoked when appropriate to grant the application for disclosure even when the requested information is found to be containing trade secrets.

On the issue of whether an applicant for information under the Act needs to demonstrate any specific interest in the information applied for, Section 1(2) of the Act is equivocal and unambiguous. It expressly states that "an applicant under this Act needs not demonstrate any specific interest in the information being applied for." One is not

unconscious of the pronouncement of the Honourable Justice Gabriel Kolawole of the Federal High Court Abuja on the issue in Paradigm Initiative Nigeria versus Dr. Reuben Abati to the effect that "there is no "country in the world where access to all forms of public records are thrown open even to an applicant who is not required to show any specific interest in the information requested from a public body" (Premium Times, 2013). He was reported to have called on the National Assembly to review the Act "to ensure that access to information is only made available to such applicants who genuinely need it for specific purpose(s)." (Premium Times, 2013).

It is submitted with respect that until the Act is reviewed to remove Section 1(2), it would amount to a wrong decision for a court to require an applicant to demonstrate specific interest in the information he/she has supplied for. It should be noted, however, that this provision in question is a standard provision in the FOI legislations of most countries (Caleb, 2014). For example, Section 6(3) of the Access to Information Act, 2002 of Jaimaca states that "an applicant for access to an official document shall not be required to give any reason for requesting access to that document." Having such a provision in Nigeria's Freedom of Information Act is, therefore, in conformity with international best practice.

Perhaps the most serious issue arising from the cases considered is whether the Act is applicable to the states of the federation. While the need for domestication of the Act in the states was canvassed and rejected by Honourable Justice Akinteye in Ogundola's case, Honourable Justice Abang ruled that the Act was not binding on the 36 states of the federation.

While brilliant arguments have been put up in the cases considered for and against the applicability of the Act in the states, the relevant provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) relating to the legislative powers of the Federal Republic and the State should be noted. The provision of Section 4 and the Second Schedule to the Constitution are instructive. Matters which the National Assembly and the State House of Assembly can legislate upon are spelt out in the legislative lists.

Beyond the arguments for and against the applicability of the Act in the states and without prejudice to the relevant provisions of the 1999 Constitution (as amended), it is submitted that enactment of a FOI legislation in a state may be desirable to take care of the peculiarity of the state as long as such enactment is not inconsistent with any legislation validly made by the National Assembly as required by Section 4(5) of the 1999 Constitution (as amended). In some countries with FOI legislations, the states, provinces and territories have their own enactments. Canada and Australia are two examples of such countries. In

Canada where Access to Information Act which is a federal legislation is in place, Alberta, Manitoba, Nova Scotia, Ontario and Saskatchewan have enacted Freedom of Information and Protection of Privacy Act for their states. Similarly, despite the Freedom of Information Act 1982 at the federal level in Australia, states like New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia have, at different dates, enacted their own FOI legislations with different nomenclatures.

Conclusion and Recommendations

The Freedom of Information Act 2011 was enacted in Nigeria after a prolonged legislative process to guarantee, among other objectives, the right of access to public records and information in line with the practice in democratic countries of the world thereby promoting openness in governance as opposed to the hitherto entrenched culture of secrecy. The enactment of the Act is not the end in itself but the ability to give effect to its provisions. One means by which the provisions can be implemented is through judicial review of the decisions of public institutions on request for records and information.

Since the enactment of the Act in 2011, Nigerians, particularly human rights activists and non-governmental organisations have subjected the provisions of the Act to judicial interpretation. The court cases arising from the implementation of the Act have no doubt generated legal issues which have implication for the development of the law. The issues generated have brought to the fore the need to be proactive in the implementation of the Act and even thinker with it through the process of amendment.

Exemptions to disclosure of information which have been criticised to be overwhelming should be given limited application. The court should undertake thorough scrutiny of requested information to ascertain if it falls within the scope of an exemption. Effect should also be given to the overriding public interest provision in appropriate cases to ensure access to information. If it is to be made applicable in the states, the Act should be amended to leave no one in doubt as to its applicability to the states of the federation. For instance, the term ‘Minister’ is defined in the interpretation section of the Act without reference to the equivalent term ‘Commissioner’ for the states. States should be encouraged to adopt the Act or enact their own freedom of information legislation. In the event of their failure to do so, the Act should be made applicable to them in order to attain its purposes throughout the country.

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