

# 10 Years of Freedom of Information Act in Nigeria: The Journey So Far, Prospects and Challenges among Media Practitioners

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## ABSTRACT

*Information is believed to be the oxygen and livewire of any democracy around the world and that includes Nigeria. The freedom of information act was enacted into law in Nigeria in the year 2011 after several failed attempts in the past, with a view to giving the citizenry access to certain government information thereby making them more accountable and responsible to its citizens. It is however appalling that 10 years down the line, the act which came with so much promise has largely remained ineffectual for a plethora of reasons. First the act remains unimplemented across several states of the country. Furthermore, the success stories that have emanated from the use of the act remains few and far in between and this is what necessitates the need for this study. The study employed the use of quantitative research method, specifically through the use of explanatory approach through secondary research materials to explain the headings examined in the study. Findings from the study identified factors such as ignorance, secrecy, bureaucracy, poor record keeping, non-enforcement and too many clauses in the act as reasons for its poor implantation. The study therefore recommends the need for more public enlightenment, as well as a more pragmatic approach by the key stakeholders in order to enable the act fulfill its full potentials.*

## **INTRODUCTION**

The Freedom of Information Act recently marked its tenth anniversary in Nigeria and thus far, nothing significant has occurred in terms of its actual application, particularly at the state level. This is due to the fact that state governments have shown little or no desire to domesticate the legislation enacted by the federal government, apart from being sluggish to develop a state version of the Act. State governments often assert that federal law does not apply to them and that the federal legislation is unconstitutional. Only two states, Ekiti and Imo have passed their own version of the FOI Act, while the other 34 states are not willing to adopt that of the Federal Government neither are they willing to pass the state version of the law. Failure at subnational level to comply with the FOI Act directly contradicts Nigeria's declared objectives, particularly as a part of the Open

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Government Partnership (OGP). According to Adeduntan (2021), this indicates that most officials, especially the governors of the state, do not favour the FOI Act and take deliberate efforts to prevent the Act from being applied. This is antithetical to the ideals of democracy worldwide, because democracy is all about open and transparent government participation. Where individuals find it difficult to understand events at national level, openness and accountability at national and local level brings the government closer to the people it serves. It enables them to ask questions and make educated elections. It also ensures that the democratic benefits are provided to people at the grassroots level. Lack of access to information on the other hand leads to corruption. Secrecy enables backroom negotiations to influence public expenditure for the benefit of the few and not the many. Lack of knowledge prevents citizens from assessing their leaders' actions and from even making educated choices regarding the people they choose to serve as their representatives.

There is a mountain of academic research to support the fact that having access to information and making it available benefits nearly all nations. This makes it possible for authorities to collect data on people's activities and issues, making it easier for researchers to learn about the population, and making it easier for the general population to express opinions and hold government accountable for their policies and actions (Gewalli, 2009). Poverty, illiteracy, corruption, poor administration, and backwardness are all consequences of a country's inability to get knowledge (Denedo, 2003). Today's age of globalisation and democracy compels us to accept that the availability of information is a need for social, political, educational, health, and economic well-being. It has evolved into an instrument of empowerment for everyone, as well as a catalyst for social change, active and engaged citizenship, and lifelong learning opportunities for all people (Carlsson, 2010).

The right to relevant public information by the citizenry and the role the full implementation of this right plays on governance and participatory democracy cannot be overemphasized. To drive home this point, Stephen Harpen (2005), contends that government policies, programmes, and activities cannot be implemented effectively unless citizens and legislators have access to relevant information. Incompetent or corrupt government can be concealed behind a veil of secrecy if citizens and legislators do not have adequate access to relevant information. While corruption and secrecy are very common in underdeveloped countries, the burden of this reality is all the more intense in those regions where they are accepted practises. Nigeria is an example of such a country. Thus, the fact that it required lengthy, laborious, and controversial battles by civil liberties groups to achieve the public right to information in Nigeria isn't quite as unexpected. The freedom of information act (FoI) Act which was enacted in Nigeria in 2011 clearly stipulates that institutions of government are allowed to provide information and documents they have in their possession. The Act ensures access to information for the public and specifies responsibilities and obligations for public institutions. FoI applications are defined in the information, exemptions are permitted, and protections are granted to public officials who provide information. While the Act itself and "Guidelines on the Implementation of the Freedom and Information Act" have been issued by the Ministry of Justice. In addition, several publications from the Ministry of Justice have been issued to provide additional resources to support implementation of the Act. The purpose of this paper is to examine the act itself as well as factors inhibiting its full implementation in Nigeria.

### **FREEDOM OF INFORMATION ACT: A GLOBAL OUTLOOK**

According to Banisar (2006), FOI has become a widely recognized in international law. Numerous treaties, agreements and statements by international and regional bodies has made it possible for governments to adopt

laws, likewise cases have also emerged in international forums. Nearly 120 countries around the world have now adopted comprehensive Freedom of Information Acts to facilitate access to records held by government bodies and some other countries have pending efforts. A few countries have issued decrees or used constitutional provisions. Many countries have adopted other laws that can provide for limited access including data protection laws that allow individuals to access their own records held by government agencies and private organizations, specific statutes that give rights of access in certain areas such as health, environment, government procurement and consumer protection.

Although FOI has been around for over 200 years, it is still evolving. Over half of the FOI laws have been adopted just over the last two decades. The growth in transparency is in response to demands by civil society organizations, the media and international lenders. Many of these laws adopted innovative processes to improve access. However, there is much work to be done to reach truly transparent government. The culture of secrecy remains strong in many countries. Many of the laws are not adequate and promote access in name only. In some countries, the laws lie dormant due to a failure to implement them properly or a lack of demand. In others, the exemptions and fees are abused by governments. Older laws need updating to reflect developments in society and technology. New laws promoting secrecy in the global war on terror have undercut access. International organizations have taken over the functions of national government but have not subjected themselves to the same rules. Banisar (2006), affirms that there is a growing body of treaties, agreements, work plans and other statements to require or encourage nations to adopt freedom of information laws. The growth is especially strong in the area of anti-corruption, where most new treaties now require that signatories adopt laws to facilitate public access to information. Most treaties on environmental protection and participation also include public access rights and have been particularly important in encouraging many countries to adopt national laws on access to environmental information and general FOI laws. Furthermore, Article 19 of both the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights provide that every person shall have the right to free expression and to seek and impart information. There is growing recognition that the right to seek information includes a right of freedom of information.

The African Union Convention on Preventing and Combating Corruption was adopted in June 2003. Article 9 on "Access to Information" states: "Each State Party shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences". It went into effect in July 2006. Article 9 of the African Charter on Human and Peoples' Rights states that "Every individual shall have the right to receive information". As of 2020, the treaty has been signed by 49 members of the AU and ratified by 44 of its 55 members. (Transparency International, 2021). The Convention created the African Commission on Human and Peoples' Rights. It should also be noted that earlier in October 2002, the Commission adopted the Declaration of Principles on Freedom of Expression in Africa. The Declaration calls on member states to recognize freedom of expression rights.

According to Omoera (2014), many nations across the world have implemented some kind of Freedom of Information Act/Legislation (FOIA/FOIL) to provide access to public records. In several other nations, people are trying to introduce legislation like this, and localities that have their own legislation may regulate access to state and local government public data, records, and papers. This is in addition to the country's freedom of information act/right/legislation, which regulates the keeping of records and the management of materials in the

hands of the government, public figures, private people, and public office holders entrusted with public responsibilities. Most freedom of information law is based on the idea that it is up to the individual to prove that they should be granted access to the requested information. If the information is not provided, a good justification has to be provided.

### **STATEMENT OF PROBLEM**

Back in the year 2011 when former President Goodluck Jonathan granted his approval to the Freedom of Information Act, there was widespread celebration, especially among media professionals and civil society organisations. According to the then-new legislation, public records and information should be more readily accessible to the public and the general public should have greater access to public records and information. The signing of the bill into law intended to signal the culmination of a lengthy campaign by the media and civil society organisations (CSOs) for more openness and accountability in government institutions. However, 10 years after the enactment of the Freedom of Information Act, observations have shown that the public has not benefited from the legislation to the fullest because they had trouble accessing information and holding public authorities responsible. Cumbersome bureaucratic procedures and obstacles, such as apathy, bureaucratic obstruction, immunity to suit, and exclusion of the private sector, were listed as some of the obstacles respondents mentioned impeding the information to gain access to public information through the Freedom of Information Act. And this has rendered the FOI Act's existence more theoretical than practical. Against this backdrop, this paper seeks to investigate the factors inhibiting the full implementation of the act with a view to making sound recommendations going forward.

### **HISTORICAL BACKGROUND OF THE FREEDOM OF INFORMATION ACT IN NIGERIA**

The history of the Freedom of Information bill in Nigeria dates back to the year 1993 when a group of Nigerian civil society groups including the Civil Liberties Organization, the Media Rights Agenda and the Nigeria Union of Journalists (NUJ) came together to work on a draft of the FOI bill. The intention back then was that Nigeria would one day return to civilian administration and when she did, there would be need for a Freedom of Information act in order to strengthen democracy by promoting and accountability. Following the return of Nigeria to civil rule in 1999, the bill was first presented to President Olusegun Obasanjo with the hope that he would pass it to the legislative arm as an executive bill but that did not happen. Hence, agitators of the bill had to route it through the members of the House of Representatives so that the bill could be sponsored as a private members bill. This however did not happen immediately as the bill went through at least four parliamentary sessions and five public hearings. In 2007, the FOI bill was passed by both chambers of the national assembly but President Oluegun Obasanjo failed to veto the bill before leaving office. On assumption of office, President Umaru Musa Yar'aduapledged to assent the bill provided it scaled through the hurdles. However, in 2009 the bill had become the oldest and longest standing bill in the history of law making in Nigeria as members of the House of Representatives stood down the bill for the 10<sup>th</sup> time. After much debate and a long drawn battle with the Nigerian legislative arm, the bill scaled all the hurdles and was eventually signed and passed into law by President Goodluck Jonathan on the 28<sup>th</sup> of May 2011, much to the admiration of the agitators and Nigerians in general. The newly enacted bill was meant to enable every Nigerian legal right of access to information, records and documents held by government bodies and private bodies carrying out public functions.

## **APPRAISAL OF THE FREEDOM OF INFORMATION ACT**

The Freedom of Information Act (FoIA), 2011, sets forth the right to access information or documents maintained by public organisations regardless of whether it is in printed, electronic, or other media. However, public institutions are not required to provide information to all information that they retain, just information that is excluded under the FOI Act for reasons of personal privacy, national security, etc. Since the beginning of the FoIA, Nigerians have raised concerns about existing laws that, among other things, include the Official Secrets Act, the Criminal Code Act, the Evidence Act, the Penal Code Act, the Public Complaints Commission Act, and the National Security Act. In Sections 1(1) and 28(1), the phrase “Notwithstanding anything contained in any other Act, legislation, or regulation...” and the wordings “over and above any anti-disclosure law” are interpreted as assigning primacy to the FoI Act, rather than any other anti-disclosure law. Accordingly, to be regarded as classified, information or documents must first fit within the scope of the FoI Act's exemptions.

Section 2, Subsections 1 and 2 of the Act stipulates that all public institutions must maintain accurate records of their activities, operations, and financial activities, and make such information accessible in a way that is simple for the general public to access. The following information is included in Section 2's subsection 3: Details on the kind of information public authorities should keep and make accessible to applicants upon request. Section 3 is about a request for access to public documents, and Section 4 is about when public institutions have seven days to provide the requested information. Section 6 specifies that if the deadline cannot be met for certain clear reasons, the public institution has seven days to extend the time limit for the application. The applicant will be sent with written notice explaining why their request was denied, the section of the law it pertains to, and that the applicant has the right to appeal the decision in court. The offender in a case of unlawful denial is subject to a fine of N500,000 (Section 7 [5]). Section 10 outlaws any official or public institution from intentionally destroying documents that are held in their possession, or from attempting to modify or falsify such data prior to their delivery to the applicant. In addition, Sections 11-19 limit a public official's information to disclose information, such as national security, where public interest exceeds any harm that may be caused by disclosure. Information that would otherwise be excluded from the exemption, includes: information about foreign affairs and defence, police and investigation, individual information, as well as information related to the third party and resources used for teaching or research. Additionally, Sections 20-25 set out the requirements that an applicant denied access to public information must follow if they want to file a motion with the court within thirty days after the rejection. When the matter is heard by the court, the verdict will be issued. The last provision of Section 27 ensures that public officials are shielded from being prosecuted or penalised for releasing certain types of official information without permission. Contrary to laws in Nigeria that make it an offence to disclose confidential information without authorization, such as the Criminal Code, Penal Code, and the Official Secret Act, the FOI Act protects a public official from prosecution or punishment for disclosing such information to benefit the general public. Because the FOI Law replaces all previous laws regarding the concealing or disclosure of public information, by inference, the provision of the FOIC Law overrides any previous laws in Nigeria related to the subject. As previously said, it is clear that the provisions of the FOI Law have enabled anyone to obtain public information, thereby ensuring press freedom. The Freedom of Information Act rests on two fundamental principles: freedom of the press and the public's right to know. The Freedom of Information Act allows anybody to seek or access records without explaining the necessity for it, whether it is for investigative purposes or not. Those who are illiterate or handicapped and unable to request anything on

their own may request something via a third party. This is otherwise known as "Application via proxy." Whether in writing or verbally, a Freedom of Information (FOI) request or application may be submitted to access records. The receiving public institution's authorised official is required to transcribe and then provide the applicant a copy of the application. Public institutions that receive FOI requests are considered recipients of FOI, which means bodies whose primary roles are performing one or more of the following tasks: passing legislation, managing the government, enforcing the law, or judging people. These include, but are not limited to, executive, legislative, and judicial bodies, as well as various boards, commissions, and committees. The Act also protects officials who provide information to the public without prior permission. Additional guidance for public institutions about their FOIA duties, together with suggestions for good practise in the efficient implementation of the FOIA, has been sent by the office of the Attorney General of the Federation.

### **EXEMPTIONS AND LIMITATIONS TO THE ACT**

Rights are not unassailably protected. Every right and freedom is subject to some degree of restriction due to the existence of some types of restrictions. It is only in the context of other people's rights that an individual's rights may be used to the fullest degree possible. A fair balance between protected rights and other equally essential public interests, such as public order, security, and democratic ideals is ensured through the imposition of limitations. There are many valid restrictions to the public's right to know that are recognised under the Freedom of Information Act. These limitations are referred to as "Exemptions." Law enforcement, privacy, national security, commercial and other confidentiality, public or individual safety, and the effectiveness and integrity of government decision-making processes are examples of legitimate grounds for refusing to disclose documents that are recognised under international law. The legality of a public organization's refusal to disclose information may only be established by relying on one of the Exemptions granted under the Act. The public authority must thus demonstrate that the information it wants to conceal is covered by the restricted exemptions system in order to get permission to withhold it. There are 4 major exemptions to the Freedom of Information Act, they include qualified exemption, unqualified exemption, discretionary exemption, mandatory exemption and Injury based exemption. It is also important to note that The Freedom of Information Act provides eight issue-based exclusions that may be used in order to justify a rejection of a FOIA application. Sections 11, 12, 14, 15, 16, 17, 19, and 26 of the Act provide for certain exclusions. Exemptions relieve public officials of the duty to disclose information that is placed on them under the Act of Transparency in Government. It also translates to imply that the right of the general public to access such information is limited to the extent of the exemption granted by the court.

### **CHALLENGES TO THE IMPLEMENTATION OF THE ACT IN NIGERIA**

**POOR RECORD KEEPING AND INFORMATION MANAGEMENT:** The lack of up-to-date contact information and addresses for state government parastatals on the internet has been a major challenge to the dissemination of freedom of information requests. For state administrations that are well-known on the internet, such as Kogi, Ekiti, Kano, Oyo, and Edo, the contact addresses collected did not include information about where some of the Ministeries Departments and Agencies (MDAs) were based. Another issue was the constant renaming of state MDAs and parastatals, which was a source of confusion. Different administrations alter the

titles of ministries or combine certain responsibilities in order to better suit their visions of government. These often led in letters being returned to senders, who then had to re-address and re-send the letters to the MDAs.

**LIMITED KNOWLEDGE ON THE ACT:** Even though more Nigerians have become aware of the existence of the act, observations from different quarters show that they are not aware of how much the legislation empowers them. Furthermore, an integral percentage of the citizenry see the FOI act as strictly an affair of journalists alone. Even though a few independent organisations such as Rule of Law and Anti-Corruption (ROLAC), Action aid, RTK are doing their bit, there is absolute need for government to complete these organisations in the implementation process.

**LETHARGY IN GOVERNMENT AND PUBLIC INSTITUTIONS:** it is widely believed that a high percentage of civil or public servants especially across government institutions in Nigeria are still operating in the old mentality of the military regime and the pre-freedom of information act era where ability to interrogate the government was not a norm. According to Temitope (2020), one of the major factors responsible for this is the fear of consequences that may emanate from exercising their rights. Specifically, according to Atsenuwa (2019), the Freedom of Information Act had failed because, after it was passed, the government failed or neglected to “retrain and structure a programme of debriefing of public officers to internalise a paradigm shift that would result in a greater willingness to make information available to citizens.”

**BUREAUCRACY:** According to Adesina (2021), media houses have had reason to write and ask for information on many times and have been practically rejected. When they tried to introduce the legislation, journalists could easily ask for this and that, but there is also a government secret act that prohibits the media from seeing certain papers. This difficulty in obtaining information from the Act eventually caused many to lose interest in the legislation. Some attempts by human rights organisations such as SERAP to utilise it turned out to be fruitless.

**LACKADAISICAL ATTITUDE OF MEDIA PRACTITIONERS TOWARDS THE ACT:** The Freedom of Information is a citizen’s driven law and one of the greatest challenges to the implementation of the act in Nigeria is the fact that citizens are docile. According George (2013), even the best of legislations is useless if it is not used. Nigerians still have a rather myopic view of the concept of democracy to voting every four years and this is a major challenge. This is quite ironical: one of the major concerns in the build up to the enactment of the act was that when passed into law, the act would be excessively utilized by media practitioners to harass the government. That has however not been the case as the act has been largely underutilized particularly among journalists in Nigeria over the past 10 years. Rather, majority of those making use of the act are the mainstream community based organisations as well as civil society organizations.

**EXISTENCE OF OTHER FORMS OF ANTI-PRESS FREEDOM LAWS:** One other major challenge that has affected the full implementation of the Freedom of Information Act is the failure of the government to repeal some Anti-press freedom laws in Nigeria. There are a number of laws, such as the Official Secrets Act, the Evidence Act, the Public Complaints Commission Act, and the Criminal Code, that are aimed at preventing the free flow of information. All of these laws may have an impact on the effectiveness of the Act in the long run because some nefarious public officials may take advantage of these provisions of the Act for their own selfish gain.

Other factors inhibiting effective implementation of the act includes existence of too many exemptions on the act, lengthy administrative processes of application for information and widespread disobedience to court orders for FOI Act request enforcement, among other things.

## CONCLUSION

The Freedom of Information Act is a citizen's driven law that was meant to open the government up for citizens participation and also to enable to citizens hold the government accountable. Prior to this time, the law that was in existence was that of the official secrets act where public service information was kept away from the citizens and public servants were not free to give out information to citizens when they come asking for them. The freedom of information act however enables the citizens to know what the government is doing with public positions as well as resources. The law is also one that has given the citizens the capacity to interrogate and make demands of government institutions, completely burying the ghosts of secrecy which has over the years bedeviled government institutions. In particular, the FOI Act will benefit citizens' promotion of good governance in education, healthcare and water for citizens by exposing and tackling corruption; gain access to the information necessary to engage in informed advocacy with government institutions; and enforce compliance by not complying with FOI standards (Atsenuwa, 2019). While Okina (2021), points out that the media houses should be particularly inquisitive during investigative tasks, the system continues to be sceptical of the media ferreting for information for public consumption. Some of the issues that have hampered its full implementation in Nigeria include the reluctance of public officials to release information to the media, civil society organisations, and citizens; corruption at all levels of government; lengthy and expensive legal processes; unnecessary bureaucracy/red tape; a lack of transparency and accountability in our body politic; a lack of a democratic ethos and an open attitude to information dissemination. Anaba (2021), states that many journals rely on conventional ways of obtaining their information without necessarily invoking the Act and they occasionally succeed. Anaba believes that if media practise is led by more data and investigates, maybe it could change. But what obtains in Nigeria is "Herd Journalism": a news breaks, we all celebrate, on the surface, on the periphery, and we go forward. The age of news magazines that do excellent research appears to be absent in the Nigerian media. Adesina (2021) posits that to ensure efficient implementation of the Freedom of Information Act, the Code of Conduct Act should be modified in a number of areas such as the availability of an asset declaration form, among others. The official secret act, on the other hand, has outlived its purpose; it is a colonial statute, and we are still holding on to it. When it comes to planning government operations, there is a need for some confidentiality, but once the policy is in place, the public should have access to information about the financial commitment. The majority of the time, they will not disclose how much money they spent on a project. The legislation will not be effective unless and until all of these steps are completed. According to Duru (2020), if fully implemented, the law would make stealing of public resources extremely difficult. Furthermore, shoddy projects as well as contracts which are usually awarded to the citizens will become a thing of the past. Summarily, it is one very important law that citizens have been given that arms them adequately to engage the government and to ensure that good governance becomes a culture in Nigeria. Hence, there is need to for citizens to start seeing the struggle for accountability in governance as their own responsibility and not just that of government. Therefore, the media must be determined to continue fighting to enforce legislation, not to be frustrated by factors that discourages them from seeking classified information via the FOI, while the media

owners or interested parties must approach the national assembly in order to ensure nationalisation of the act and stakeholders must also approach the Supreme Court.

## RECOMMENDATIONS

1. There is need for relevant stakeholders including the media and civil society groups to carry out a great deal of enlightenment campaign to make more Nigerians aware of the provisions of the act. In addition to that, there is also need for broadening public knowledge and comprehension of FOIA far beyond simple awareness, as well as the use of contemporary information management systems are all important goals for this administration.
2. Bureaucracy has been identified as a major hindrance to the FOI act especially among public institutions in Nigeria. Therefore, it is essential for the government both at federal and states level to put in place systems to improve people's capacity to access information effectively to execute the Law. Such mechanisms should aim to enhance public institutions' compliance with the provisions of the Act in various critical areas, including their responding to requests for information from the public, publication of information that they are required to disclose proactively and reporting annually to the Federal Attorney General. Longe (2021) believes that if the FOI Act has a meaningful effect on open and accountable Nigerian governance, its application at all levels of government must also be guaranteed.
3. Technical and tricky aspects need to be simplified or explained in the Act. This helps avoid contradictory decisions in the application of the FoI Act by the courts. More significantly, it is also essential for the National Assembly to make it clear that the FoI Act applies to all States of the Federation in order to eliminate the domestication and non-domestication of the law by States. The National Assembly should take measures to rectify the legal loopholes in order to reinforce them. General engagement with stakeholders also has to be conducted in order to identify alternative methods to effectively execute the requirements of the Act for simple access to information.
4. There is need for the press, students, pressure groups, and even religious organisations to all get training and retraining on how to use the Act, and this should be done on a regular basis. It is necessary to create a simplified or abbreviated version of the Freedom of Information Act in order for people to better comprehend the requirements of the Act and to enhance its use. To make it easier for individuals to comprehend the requirements of the Freedom of Information Act in Nigeria, publications should be published in a variety of local languages. Also important is the participation of institutions such as the National Orientation Agency, the Nigeria Bar Association, the media, and civil society organisations in the responsibility of educating Nigerians about the existence of the Freedom of Information Act, as well as their rights and responsibilities under it.

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