

Freedom of Information Act, 2011

INTRODUCTION

The Freedom of Information Act 2011 (“the **FoI Act**”) was signed into law by the President of the Federal Republic of Nigeria, Dr. Goodluck Ebele Jonathan on 28 May, 2011. The FoI Act represents a significant reform aimed at increasing access to public information and its birth has been lauded by commentators for its commendable efforts at instilling accountability and transparency in the activities of Public Institutions.

The FoI Bill was first introduced to the National Assembly in 1999. However, due to several impediments, it was not passed by the House of Representatives until 2004. The House of Representatives and Senate both passed a Freedom of Information Bill in August 2004 and November 2006 respectively. A harmonized bill was forwarded to the then President of the Federal Republic of Nigeria, former President Olusegun Obasanjo, for assent but the Bill was not signed into law before the end of his tenure in 2007.

The FoI Bill marks a significant departure from the era where the activities of public institutions were shrouded in secrecy and access to public information and official records severely restricted. Government documents were marked “classified”, “top secret” or “confidential” and members of the public had no access to such documents except they were voluntarily released by usually senior government officials or issued as press statements.

RIGHT OF ACCESS TO RECORDS

A major feature of the FoI Act is that it guarantees the access of all persons to records and information in the custody of any public officer, institution or agency of the government regardless of whether he has any specific interest in the information sought to be disclosed. In addition, any person has a right to institute proceedings in Court to compel any public official, agency or institution to comply with the provisions of the Act, as the FoI Act regards those public officers as mere custodians of the public records.

As at the date of publication of this newsletter, the FoI Act is yet to be gazetted. This paper is therefore based on the draft bill presented to the National Assembly.

OBLIGATION TO RETAIN INFORMATION

Another important feature introduced by the FoI Act is the obligation placed on public institutions to record and keep information about their activities, operations and businesses. Undoubtedly this is a move from the old regime under which, a public official, agency or institution had no obligation to keep such information and could destroy records without punitive consequences. The FoI Act further stipulates that the information kept should be organised and maintained in such a manner as to facilitate public access to it. For clarity, the FoI Act prescribes the categories of information which public institutions are required to keep records of, disseminate or make readily available to members of the public through various media.

INFORMATION EXEMPT UNDER THE ACT

Under the FoI Act, certain classes of information are exempt from being made accessible to the public. These include:

- a) Information which may be injurious to the conduct of international affairs and the defense of the Federal Republic of Nigeria.
- b) Information relating to any law enforcement or investigation.
- c) Personal information.
- d) Third party information.
- e) Information conferred with professional or other privileges by law.
- f) Research or course material prepared by members of a faculty.

Notwithstanding the exemptions above, where an application for disclosure of information is denied, the Court shall order that the information be disclosed where:

- a) the institution is not authorized to deny the application;
- b) although the institution is authorized to deny the application for disclosure, the Court nevertheless determines that the institution did not have reasonable cause to deny the application; and
- c) the Court determines that it is in the overriding public interest to disclose.

The FoI Act does not apply to published material or material available for purchase by the public or information/material in the National Library or National Museum.

PROTECTION OF 'WHISTLE BLOWERS'

One of the major hallmarks of the FoI Act is the protection it affords to public officers. Under the Official Secrets Act, Cap 03, LFN 2004 ("**Official Secrets Act**") it was a punishable offence for anyone to obtain, transmit, reproduce or retain information or classified matter which he was not authorized on behalf of the government to do. Under the FoI Act, public officers are now protected against civil or criminal proceedings due to disclosure of certain official information which was done without authorization or in good faith. This is a clear departure from the era pre the FoI Act, where there were adverse consequences for disclosing certain kinds of official information without authorization. This innovation of the FoI Act no doubt creates an enabling environment for 'whistle blowing'.

TIME LIMITS

Within 7 days of receipt of an application for information, public institutions must make the information available or give a written notice to the applicant with reasons for refusal of the application, including the provisions of the FoI Act under which the refusal is made.

In the event that the public institution is unable to comply with the statutory time limit for granting or refusing an application, it may in certain permitted instances, make an extension of the time limit, for a period not exceeding 7 days. A notice for such extension must be issued, stating whether the extension falls under any of the circumstances set out under the FoI Act. The notice must also contain a statement that the applicant has a right of recourse to the Court for a review of a public institution's decision to extend the time limit.

SANCTIONS

The FoI Act makes it an offence (punishable on conviction by a competent Court with a minimum of 1 year imprisonment) for any public official to willfully destroy any records in his custody or attempt to alter the records before release to the person applying for the information.

A public officer or institution's failure to respond to an application for information within the stipulated number of days, would amount to a denial of access which is punishable with a fine of ₦500, 000.

Notwithstanding the Criminal Code or the Official Secrets Act, the FoI Act protects public officers who without authorization disclose information which they reasonably believe to show:

- 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 Act.*

CONCLUSION

In addition to the more obvious benefit of accountability, the FoI Act will reduce government's opacity and secrecy. Public transparency is key to a democratic and healthy society, both of which Nigeria is taking steps to become. Effective implementation of the FoI Act might just be the entry point to public efficiency and accountability that Nigeria has for so long awaited. Fortunately, the commander in chief of Nigeria's armed forces is lending support to the Act and such support must not wane but grow as the true work of implementation and compliance begins.

For further information please contact:

Pauline Ogebe
Senior Counsel
08037193596

Chika Alatta
Counsel

Olaniwun Ajayi LP
The Adunola,
Plot L2,
Banana Island,
Ikoyi, Lagos.
+234 1 270 2551

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