

THE RIGHT TO ACCESS INFORMATION: NIGERIA'S FREEDOM OF INFORMATION ACT 2011, 14 YEARS AFTER

Peter Terkaa Akper*
Ebele Ogwuda**

Abstract

The right to access information is recognised as a fundamental right and a necessary complement of democratic governance. Nigeria joined the global community in asserting this right by enacting the Freedom of Information Act, 2011 (FOIA), widely acclaimed as revolutionary in the nation's quest to eradicate the culture of secrecy in governance and embrace open government ethos. Deploying the doctrinal research methodology, the paper analyses the provisions of the Act, judicial pronouncements and views of learned authors to assess the extent to which the Act has been implemented over the past 14 years. It seeks to determine whether the Act is fit for purpose in its current form or needs to be reformed/amended to enhance its implementation and effectiveness. The paper posits that, although the Act substantially mirrors global trends in freedom of information legislation, local peculiarities and challenges operate to impede access to information. It therefore recommends that certain amendments, reforms, provision of equipment and IT infrastructure, and attitudinal changes are required to enhance the enjoyment of the right to information in Nigeria.

Keywords: right to information, access to information, fundamental right

1. INTRODUCTION

Access to information is a fundamental pillar of democratic governance, transparency, and accountability. It gives citizens the

* LL.B (Hons); LL.M (Jos); B.L.; PhD, OAU, Ile-Ife) Research Professor of Law & Senior Advocate of Nigeria, Nigerian Institute of Advanced Legal Studies, Abuja. E: Mail: p.akper@nials.edu.ng or peterakper@gmail.com.

** LL.B (Hons); LL.M; B.L Senior Research Fellow, Department of Public Law, Nigerian Institute of Advanced Legal Studies. E: mail: ebeleogwuda@yahoo.com

platform to actively participate in public affairs, strengthens oversight of government actions, and promotes the rule of law. It was in recognition of this principle that Nigeria enacted the Freedom of Information Act (FOIA) in 2011, marking a major milestone in the nation's democratic evolution. The Act is intended to ensure public access to information held by state institutions, strengthen openness in governance, and reduce corruption by promoting greater transparency.¹

The FOIA was passed into law by the National Assembly and assented to by President Goodluck Jonathan, CGFR, on the 28th May 2011. The Act comprises 32 sections that address various aspects, including rights of access to records, procedures for requesting information, circumstances under which requests can be granted or refused, exemptions, judicial review, and the Attorney General's oversight responsibilities. The Act seeks to make public records and information freely available.² The Court of Appeal gave its imprimatur on this point in *CBN v. PPDC LTD/GTE*³.

The idea behind the FOIA is to promote open government and engender transparency and accountability in government business. It is generally believed that access to information as provided by the Act will promote good governance and other democratic values necessary for the country's sustained development. In *Elukpo v. Medical Director, FMC Lokoja*⁴, the Court of Appeal reiterated the objective of the FOIA, holding that the Act was enacted to make public records and information freely available to any interested members of the public. This, no doubt, is to expose public institutions to openness and

1'Policy Brief on the Freedom of Information (FoI) Act in Nigeria' <https://humangle.org/the-freedom-of-information-foi-act-in-nigeria/> accessed 16 December 2025

2 See the Explanatory Memorandum to the Freedom of Information Act, 2011.

3 (2018) LPELR- \$5856 (CA)

4 (2021) LPELR -53104 (CA); also Idris Isiaku Gwomna v. Incorporated Trustees of Network against Corruption and Trafficking Suit No. HC/ABJ/CS/242/2023 Judgement delivered 26th April, 2023.

accountability in their basic dealings and decisions on issues of public interest.

Despite the laudable objectives of the FOIA, the concrete realisation of its objectives remains a subject of critical discourse 14 years after its enactment. While the Act has provided a legal framework for requesting and obtaining information, its implementation has been largely hampered by institutional resistance, inadequate public sensitisation, inconsistent judicial interpretation, and concerns about national security and bureaucratic secrecy. The lacuna between law and practice raises important questions about the effectiveness of the FOIA in advancing the right to access information in Nigeria.⁵

It is against this background that the paper examines the extent of the right to access information under Nigeria's Freedom of Information Act 2011 and how the right has been enjoyed in concrete terms fourteen years after its passage. The paper is segmented into six parts, including this introduction. Part II interrogates the rational basis for the FOIA, drawing from the jurisprudence of international legal instruments and the Constitution of the Federal Republic of Nigeria, 1999. Part III examines the regime of rights and duties imposed by the FOIA and their ramifications on individuals and public institutions. Part IV discusses the general provisions of the FOIA, including its scope of application and the supervisory powers of the Office of the Attorney General of the Federation. Part V examines the implementation issues and challenges of the FOIA, including policy options, while Part VI is the conclusion.

2. RATIONAL BASIS FOR THE FOIA

The FOIA is not just an abstract piece of legislation; its ideals are firmly rooted in the Constitution of the Federal Republic of Nigeria, 1999 (1999 Constitution), which provides that *“Every person shall be entitled to freedom of expression, including freedom to hold opinions*

5 Lucy Eyo, 'The FOI Act – Progress, Challenges and the Way Forward' <https://policyalert.org/the-foi-act-progress-challenges-and-the-way-forward/> accessed 16 December 2025.

and to receive and impart ideas and information without interference."⁶ Freedom of expression, recognised as a basic human right,⁷ inherently encompasses the right of free access to information, which the FOI Act seeks to uphold. The universality of the right is amply demonstrated by the fact that 129 countries have enacted access-to-information laws (or freedom of information laws), and over 50 Constitutions worldwide recognise this right, with extensive jurisprudence confirming it.⁸

Apart from the constitutional basis of the FOIA, a plethora of international legal instruments that Nigeria has ratified amply provide for the freedom of information.⁹ Consequently, several jurisdictions have enacted their freedom of information regimes in accordance with the dictates of their legal system and state of development. The right has also received judicial *imprimatur* in the case of *Youth Initiative for Human Rights v. Serbia*¹⁰, where the European Court of Human Rights held that Serbia violated the right to freedom of expression (Art. 10 ECHR) by refusing to grant the Organisation access to information held by the Intelligence Agency. ¹¹

On the content of access to information legislation, the jurisprudence of the United Nations Human Rights Committee has set a gold

⁶ CFRN 1999 s 39(1).

⁷ In *Constitutional Rights Project & Ors v. Nigeria* (1999) AHRLR 191 (ACHPR), the African Commission on Human and Peoples' Rights held inter alia that "Freedom of Expression is a basic human right ...this right comprises the right to information and expression of opinions". Also, the UN General Assembly Resolution 59 (I) adopted in 1946, which states that "Freedom of Information is a fundamental human right and ...the touchstone of all the freedoms to which the United Nations is consecrated".

⁸ 'Right to Information in PNG Roundtable 2023' <https://transparencypng.org.pg/2023/09.pdf> accessed 10 October 2025. Also, 'Access to Information' <https://uncaccoalition.org/learn-more/access-to-information/> accessed 10 October 2025

⁹ UDHR Art. 39, ACHPR Art. 9(2), and ICCPR Art. 19(2).

¹⁰ (Application No 48135/06).

¹¹ For further reading see, 'Youth Initiative for Human Rights v. Serbia' <https://globalfreedomofexpression.columbia.edu/cases/youth-initiative-for-human-rights-v-serbia/> accessed 30 December 2025.

standard prescribing the principles that States should adopt to give effect to the right of access to information, as follows: 12

- (a) State parties should proactively put in the public domain Government information of public interest.
- (b) States parties should make every effort to ensure easy, prompt, effective and practical access to such information.
- (c) States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.
- (d) The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant.
- (e) Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information.
- (f) Authorities should provide reasons for any refusal to provide access to information.
- (g) Arrangements should be put in place for appeals from refusals to provide access to information, as well as in cases of failures to respond to requests.

The benchmarks set by the UN Human Rights Committee are useful indicators for assessing the extent to which Nigeria's FOIA conforms to global standards. The assessment examines the salient provisions of the FOIA regarding the specific rights and duties imposed on public institutions.

12Human Rights Committee, General Comment No. 34, Article 19: Freedom of Opinion and expression, CCPR/C/GC/34, para 19, 21 July 2011 cited in Chidi A. Odinkalu & Ledum T. Bhule 'Implementing the Freedom of Information Act (FOIA) 2011: An Overview' (Being a paper presented at the Sensitisation Workshop on the Freedom of Information Act 2011 for Legal Advisers and Law Officers, organised by the Federal Ministry of Justice, 20th October 2011).

3. RIGHTS GRANTED AND DUTIES IMPOSED UNDER THE FOIA

The FOIA has granted rights to individuals and imposed specific duties on public institutions, which are examined in this part of the paper.

(a) Right of access to records and information

The FOIA establishes the right to access records and request information. The right is so extensive that it is immaterial whether or not such information requested is contained in any written form, so long as such record or information is in the custody or possession of any public official, agency or institution, however described.¹³ Equally significant is that the right to access information is not based on any demonstrable interest, as the applicant need not prove a specific interest in the requested information.¹⁴ In *Alo v. Speaker, Ondo State House of Assembly & ANOR*, the Court of Appeal observed succinctly that:

“For the sake of emphasis, possession of locus standi has been the bane of the citizens’ advocates in public interest litigation to query transparency and accountability in governance in Nigeria. In a democratic dispensation, such as the Nigeria’s, the citizens have been proclaimed the owners of sovereignty and mandates that place leaders in the saddle. The requirement is a serious fracture of the citizens’ inalienable right to ventilate their grievances against poor governance vis a vis expenditure of public funds generated from their taxes. The sacrosanct provisions of section 1(2) of the Freedom of Information Act, 2011 which has ostracized this disturbing requirement, has, admirably, remedied the harmful mischief appurtenant to it.”

¹³FOIA 2011 s 1(1). See also N J Madubuike-Ekwe, J N Mbadugha, ‘Obstacles to the Implementation of the Freedom of Information Act, 2011 in Nigeria’ <https://scispace.com> accessed 11 December 2025.

¹⁴FOIA 2011 s 1 (2)

On the issue of custody or possession, it is submitted that the right to access the information can only be enforced where the Applicant can prove that the requested information is in the custody or possession of a public official or institution.¹⁵ In *Elukpo v. Medical Director, Federal Medical Centre, Lokoja*,¹⁶ the Court of Appeal dismissed the Appellant/Applicant's case for failure to convince the court that the document/information sought was in the possession of the respondent. Without prejudice to the definition of 'public record or document' in section 31 and the provision of section 3(2) of the FOI Act, it is further submitted that to invoke the provisions of section 1, the Applicant must show that the public institution is in physical as opposed to constructive possession. Mere control will not suffice, as control does not *ipso facto* translate to accessibility.

The information requested must be real and available. Thus, where the requested information does not exist, the public institution cannot reasonably be expected to disclose it. In *Rommy Mom v. The Executive Secretary, Benue Emergency Management Agency & Attorney General and Commissioner for Justice, Benue State*.¹⁷ The Applicant requested the respondent to disclose the total amount of the monies collected by the 1st Respondent from the Federal Government, Local Government, Private Organisations, and donor agencies as aid to flood victims resulting from flooding that affected Benue State. The suit was dismissed because the statements of fact were mainly the applicant's imagination that money had been donated to the 1st Respondent.

On the question of what constitutes a public document, the Court in *Alo v. Speaker, Ondo State House of Assembly & Anor* ¹⁸held that the audited accounts of Ondo State which the Appellant sought to obtain is a public document within the meaning of s 102 of the Evidence Act, 2011 and reiterated the provisions of section 1(2) of the Freedom of Information Act, 2011 which states that an Applicant under the Act

¹⁵ N J Madubuike-Ekwe, (n 12).

¹⁶ [2022] 3 NWLR (Pt. 1816)183 (2021).

¹⁷ NHC/137/2013 Judgement dated 15th August 2013

¹⁸ (2018) LPELR 45143 (CA).

needs not demonstrate specific interest in the information sought to be obtained.

(b) *Right to Institute proceedings in court to compel compliance with the Act.*

To ensure that the right to information established under the Act is fully protected, the FOIA vests Applicants with the right to institute proceedings in the Court to compel compliance with a request to disclose information.¹⁹ On the question of who is entitled to the enjoyment of the right? Section 1 clearly states that the FOIA recognises the Applicant as the only person to enjoy the right and no one else. The implication is that third parties or those remotely connected cannot sue to enforce the rights provided by the Act, as they must come within the meaning of the term 'applicant' under the Act.²⁰

(c) *Right to charge fees pursuant to the grant of requests*

The Act envisages a situation in which the applicant may be charged fees to enable the requested information to be processed and supplied. However, fees chargeable under the Act must be limited to standard charges for document duplication and transcription.²¹ Can the charging of fees be used to discourage frivolous or vexatious requests or keep their number within manageable limits to enable the institution to focus on its core functions? The Act does not envisage that charging fees should be used to achieve all or any of the objectives enumerated, but rather to ensure that public funds that could otherwise be used for other purposes are not deployed solely for processing requests for information. Besides, the best practice recommended by the Human Rights Committee is that the fees should not constitute an unreasonable impediment to access to information.

To ensure that the right to access records and information established under the Act is given effect to by all concerned, the Act imposes a

¹⁹ Also see (1) FOIA 2011 s 7(1).

²⁰ FOIA 2011, s 31.

²¹ FOIA 2011 s 8.

wide range of duties on Public Officers, Public Institutions and the Attorney General of the Federation. These include:

(i) *Duty to record and keep information by public institutions*

Public institutions are encouraged to record and retain information about their activities, operations, and businesses.²² The rationale for this provision is easy to discern because there will be nothing to furnish applicants requesting such records or information without their existence. This duty is further strengthened by the requirement that public institutions should ensure the proper organisation and maintenance of all information in their custody to facilitate public access to such information.²³ The best practice is for Public Institutions to proactively place Government information of public interest in the public domain and make every effort to ensure easy, prompt, effective and practical access to such information.

(ii) *Duty to ensure proper organisation and maintenance of information in a manner that facilitates public access to such information*

Closely associated with the duty to keep records and information is the duty to ensure proper organisation and maintenance in a manner that facilitates public access to such information.²⁴ In *Registered Trustee of Unemployed Youths' Initiative v. CCB & Anor*²⁵ the court of Appeal reiterated that Section 2(2) of the Freedom of Information Act, 2011 states that “*A public institution shall ensure that information referred to in this section is widely disseminated and made readily available to members of the public through various means including print, electronic and online sources , and at the offices of such public institutions.*” This implies that the obligation to disclose is both proactive and responsive.

²² FOIA 2011 s 2(1).

²³ See section 31 of the FOIA for the meaning or definition of a ‘Public Institution’

²⁴ FOIA 2011, s 2(2)

²⁵ (2023) LPELR-6008 (CA)

Given the pervasive culture of poor record-keeping and information storage within public institutions, the importance of this duty cannot be overemphasised. This is especially true, as the FOIA imposes timelines for complying with requests for information.²⁶ What does the organisation and maintenance of information entail? Would it ultimately require public institutions to keep their records or information in electronic formats? Will maintaining paper files in filing cabinets or stores, as is currently the practice in many public institutions, suffice? The FOIA has introduced a new ethos in information storage and retrieval, facilitating easy retrieval.

(iii) *Duty to disseminate and make information available to the public*

The FOIA imposes on public institutions a duty to publish certain information provided under section 2(3) (a) –(f). It proceeds to list the various means by which the information can be readily made available to the public, such as print, electronic, and online sources, as well as the offices of such public institutions.²⁷ Section 2 (3) contains a wide range of information that a public institution is required to publish. How can this duty be effectively discharged? Will a notice Board at the office suffice for the purposes of the Act? Will public institutions be required to issue newsletters or maintain a web presence with a Portal that contains all required information? What amount of bandwidth is required? These are the issues that those charged with managing information systems in public institutions must address to comply with the Act's provisions. The point is that public institutions are now under a duty to ensure they acquire the necessary IT infrastructure to support the information required to be published in compliance with the dictates of the FOIA.

(iv) *Duty to update and review information published*

The Act imposes on public institutions a duty to periodically update and review the information published, and to make changes

²⁶ Section 4 provides that public institutions shall subject to certain provisions of the Act furnish the information requested within 7days.

²⁷ FOIA 2011 s 2(4).

immediately.²⁸ This is to ensure that the information published remains useful to the public, as stale or outdated information will serve no useful purpose except as historical records of the institution in question. This calls for regular updates to records and information to keep pace with changes in the organisation. Sadly, many public institutions are yet to comply with the requirements of the law.

(v) *Duty to reduce oral applications into writing*

The Act envisages that oral requests for records or information may be made. In such circumstances, the Act imposes on the authorised government official of the institution concerned, the duty to reduce such oral application into writing in the manner prescribed and furnish the applicant with a copy of such application.²⁹ This requirement is to ensure that the applicant has better access to the required information, rather than being denied it because the application was not made in the required format. In this regard, illiterate or physically challenged applicants who cannot request information in the prescribed format can do so through third parties.³⁰ The challenge with this provision is where public officials are reluctant to disclose information considered sensitive. The chances of extending the requisite cooperation is in practical terms limited.

(vi) *Duty to provide the information requested within 7 days*

Applicants are entitled to receive the information requested within 7 days of the application. Thus, except where a time extension is justified under section 6, the request was denied under section 7, or the requisite fees were not paid as provided in section 8, compliance with the timelines stipulated under the Act is strict.³¹ The question arises whether 7 days is enough time to furnish improperly organised information in an easily retrievable format. It is apposite to note that the UK Freedom of Information Act 2000 ³²prescribes a 20- working day period for providing information, while the Promotion of

²⁸ FOIA 2011 s 2(5).

²⁹ FOIA 2011 s 3(4).

³⁰ FOIA 2011 s 3(3).

³¹ FOIA 2011 s 4.

³² UK FOIA 2000, s.10

Information Act of 2000 of South Africa allows requests for information to be granted or refused within 30 days, which can be extended for further period of 30 days depending on the circumstances.³³

Given Nigeria's present record-keeping challenges, what is the rationale for the 7-day time limit under the FOIA? Will public institutions, in the circumstances, be reasonably expected to comply with this provision of the Act given the poor state of record keeping and IT infrastructure in the public service? It would appear that this provision of the law is largely aspirational with the aim of encouraging improved record keeping culture in the public service as strict compliance may not be feasible with many public institutions especially where the information required relates to complex information kept by different departments over a long period of time.

(vii) *Duty to give written Notice of denial stating reasons and the basis for the denial in accordance with the Act*

The Act seeks to ensure that the application for information is determined one way or the other by prescribing that written notice of such determination should be given to the applicant where the application is denied in whole or in part. The Act further provides that the reasons for such denial must be stated, along with the provisions relied upon to arrive at such determination.³⁴ The provision encourages public officers to consider the application before deciding whether to deny it. The reason for the denial must be stated to ensure that public officers do not act capriciously, as their decision must be supported by relevant provisions of the Act. It also invites the Courts to examine the request and the reasons for the denial to decide whether such a denial of information was justified.

33 PAIA No.2 of 2000. S. 25. See also. Omosede A Osawe, 'A Comparative Analysis of the Right of Access to Information under the Nigerian Freedom of Information Act 2011 and the South African Promotion of Access to Information Act 2001' <https://journals.co.za/doi/10.17159/1996-2096/2022/v22n2a7> accessed 14 October 2025.

34 FOIA 2011 s 4(b).

(viii) *Duty to inform the applicant of the remedy of judicial review*

It must be appreciated that where a public institution decides to deny a request for information, it shall be the duty of such public institution to give written notice to the applicant and furnish him or her with a statement affirming the applicant's right to judicial review.³⁵ The Act ensures that applicants are afforded all the legal rights available to them, especially the right to apply to court for judicial review of a decision denying access to records of information. The right to remedy of judicial review must however be exercised within a 30 day period provided by section 20 of the FOIA. Failure to exercise the right within the specified time limit will render the action statute barred. In *The Incorporated Trustees of Network Against Corruption and Trafficking Foundation v. The Code of Conduct Bureau & Ors*³⁶ the Court declared the application for judicial review brought outside the statutory permitted period by section 20 of the FOIA statute barred.

The remedy of judicial review is significant because the FOI Act 2011 does not provide for administrative remedies, unlike the UK enactment. What are the implications of the absence of administrative remedies under the Nigerian enactment? Does it signify a lack of confidence in administrative bodies or public confidence in the judiciary? Given the delays litigants suffer and the slow pace adjudication and general dispensation of justice in the country, does this provision promote the ideals of the Act?

The absence of an Administrative tribunal under the FOIA, such as the one in the UK's FOIA, may not be fatal because the National Human Rights Commission (Amendment) Act 2011 empowers the Commission to deal with "all matters relating to the promotion and protection of all human rights guaranteed."³⁷ The implication is that the Commission can investigate complaints relating to the refusal to provide information requested from a public institution, and make

³⁵ FOIA 2011 s 5(1).

³⁶ Suit No. FHA/ABJ/CS/250/2023 Judgment dated 26th April 2024

³⁷ National Human Rights Commission (Amendment) Act 2011 s 6 (a), (b).

appropriate determinations and binding orders in respect of the right of access to information established under the FOI Act.

Given the inherent delays in the justice system, this may be a much faster way of ensuring compliance with the FOIA and the enjoyment of the right to access information than through the judicial process.

(ix) *Duty to deny requests for personal information or third parties, subject to defined limits of the Act*

Although the general objective of the Act is to aid access to records and information held by public institutions, the Act expressly protects the dissemination of personal information except as approved under the Act. This generally means that public officers or institutions are obliged to deny requests for information that contains personal information exempted under the Act.³⁸ Similarly, public institutions are obliged to deny applications for information relating to third parties.³⁹ In the case of *The Incorporated Trustees of Advocacy For Societal Rights Advancement and Development Initiative v. The Governor of Central Bank of Nigeria and Attorney General of the Federation*,⁴⁰ the Applicant brought a suit to compel the CBN to disclose the quantum of money (cash/cheque/bank transfer or whichever payment mode) released for the medical treatment of President Muhammadu Buhari. The court relied on section 14 (1) (b) of the FOIA to hold that the information required by the Applicant was personal information that can only be disclosed with the consent of the person to which it relates and since there was no evidence of the President having consented to disclosure of personal information relating to his health, and the information not publicly available, the information was exempt by virtue of section 14 (1) (b) of the FOIA 2011.

(x) *Duty not to disclose information exempted by the FOIA*

³⁸ FOIA 2011 s 14 (1) (a) –(e).

³⁹ FOIA 2011 s 15(1) (a)-(c)

⁴⁰ Suit No. FHC/ABJ/CS/1142/2017. Judgement delivered on 5th June, 2018.

Individuals and public institutions are under a duty to refuse to disclose information that is exempt from FOIA. This includes Professional and or other privileges conferred by law, such as Legal Practitioner-client privilege; health workers-client privilege; journalism confidentiality privilege; and any other professional privileges conferred under the Act.⁴¹ Furthermore, a public institution may deny an application for information which contains course or research materials prepared by faculty members.⁴² Public institutions are, however, permitted to disclose information that does not contain such exempted information where there is a mix of the exempted and non-exempted information in a request for information.⁴³

The Act contains recognised exceptions to the public's right of access to information where such information pertains to: test questions, scoring keys and other examination data; architects' and engineers' plans for building to the extent that disclosure would compromise security, and library circulation and other records identifying library users with specific materials.⁴⁴

(xi) Duty to disclose information in the public interest

The FOIA contains a long list of recognised exemptions, such as exemptions of information relating to: international affairs and defence (section 11); law enforcement and investigation (sections 12); personal information (section 14); third party information (section 15); professional or other privileges (section 16); exempted records (section 19). It would appear that the exemptions are not absolute. The use of the operative word “may”, which has been judicially interpreted as conferring discretion, is deliberate. In *A.F. Skuld v. MV Sealion*⁴⁵, the Court of Appeal interpreted “may” in a statute to mean it confers a discretionary power rather than a mandatory duty. Furthermore, the FOIA contains provisions that clearly impose a duty on public institutions to disclose information that is otherwise

41 FOIA 2011 s.16 (a)-(d).

42 FOIA 2011 s. 17

43 FOIA 2011 s.18

44 FOIA 2011 s. 19

45 (2006) 5 NWLR (pt.973) 286

exempted when the public interest in disclosure outweighs any injury the disclosure would cause. In this regard, the FOIA uses the word 'shall', which has been interpreted as directing a mandatory non-discretionary duty.⁴⁶ For instance, section 15 (4) provides as follows:

A public institution shall disclose any information described in section (1) of this section if that disclosure would be in the public interest as it relates to public health, public safety or protection of the environment and, if the public interest or protection of the environment and, if the public interest in the disclosure clearly outweighs in importance any financial loss or gain to, or prejudice to competitive position of or interference with contractual or other negotiation of a third party.

The Courts have consistently interpreted 'shall' as mandatory as opposed to 'may', which has been interpreted as discretionary. In *Bamaiyi v. Attorney General of the Federation*⁴⁷, the Supreme Court affirmed that the word "shall" when used in a statutory provision imposes an obligatory duty and is not permissive.

It can be surmised, therefore, that despite the recognised exemptions in the FOIA, it nonetheless establishes a fundamental principle that information must be disclosed in the public interest.⁴⁸ The implication is that even where the information requested falls within the class of information exempted from disclosure, if it can be shown that the greater public interest will be served by disclosure, the Act leans toward making such disclosure in the public interest.

Although, the FOIA does not define public interest, the Guidelines issued by the Attorney General of the Federation⁴⁹ provide useful guidance on what public interest within the meaning of the Act entails. Public interest is a standard that balances the public's right to know with the need for government and public institutions to protect certain

⁴⁶ FOIA 2011 s.11(2); s.12 (2); s.14 (3); s.15(4); s.19 (2)

⁴⁷ (2001) 12 NWLR (Pt. 727) 468

⁴⁸ FOIA 2011 s. 11(2); s.12 (2); s.14 (3); s.15(4); s.19 (2)

⁴⁹ Guidelines on the Implementation of the Freedom of Information Act 2011 issued on 15th March 2012.

information. Since it is not defined in the Act, the public authority determines public interest on a case-by-case basis. It generally covers information that would benefit society and promote transparency and good governance, outweighing legitimate secrecy interests. This provision has the potential to open the floodgates of litigation, as every denial of a request can be challenged on the grounds that greater public interest will be served by disclosing the information than by denying it. However, professional and other privileges conferred by law are clearly exempted.⁵⁰

(xii) *Duty to submit Reports to the Attorney General of the Federation*

The Act imposes on public institutions the duty to submit reports to the HAGF not later than 1st of February of each year, a report which shall cover the preceding fiscal year and which shall include issues such as the number of determinations made not to comply with the Act, the number of appeals and the decisions made by the court, etc.⁵¹ It stands to reason that since the Office of the Attorney General of the Federation (HAGF) has general oversight over the implementation of the FOI Act, it should receive reports from public institutions on the extent of their compliance with the Act. ⁵² Given the range of issues public institutions must report on, there is a need for an agreed-upon format to ensure completeness and uniformity. This can be achieved through relevant guidelines for the MDAs. The Attorney General's Advisory on the Implementation of the Freedom of Information Act 2011 and the Reporting Requirements under section 29 is instructive. ⁵³

In addition to furnishing the HAGF with the relevant reports, public institutions also have a duty to make the report to the public, among other means, by computer and telecommunications means or if computer and telecommunications means have not been established by

⁵⁰ FOIA 2011 ss 16, 17, 18, 19.

⁵¹ FOIA 2011 s 29 (1) (a) –(h).

⁵² FOIA 2011 s 29 (6).

⁵³ See Appendix A to the HAGF's advisory to MDAs issued on 29th January 2012.

the government or a public institution, by other electronic means.⁵⁴ Although the Act envisages some IT competence and infrastructure on the part of public institutions, it nonetheless allows other electronic means to be used where such sophisticated infrastructure is unavailable. The question that arises is determining what constitutes 'other electronic means.'

(xiii) *Duty on the part of the HAGF to make a Report to the Public in Hard copies, Online and electronic access points.*

The Act enjoins the HAGF, upon receiving reports from public institutions, to make them available to the public through prescribed modes of communication.⁵⁵ How the HAGF is expected to comply with this provision is not clearly stated. What is meant by a single-access electronic access point? Is it the same as establishing a web portal where such relevant information will be posted? Online communication can be achieved by posting these reports on the Ministry of Justice's official website. The obvious implication of this provision is that the Federal Ministry of Justice must maintain a functional website with the required bandwidth and an experienced web administrator. What if there are discrepancies between the reports issued directly by public institutions and those issued to the public by the HAGF? This is why records issued directly by public institutions, based on primary sources, should be reliable.

(xiv) *Duty on the part of the HAGF to notify the National Assembly of the Report*

The Act imposes a duty on the HAGF to notify the relevant Committees of the National Assembly not later than April of each year in which the report is issued, of the existence of such report and make it available to them in hard copy and by electronic means. ⁵⁶ The relevant persons the HAGF must notify are: the Chairman and ranking minority member of the Committee on Government Reform Oversight of the House of Representatives, and the Chairman and ranking

⁵⁴ FOIA 2011 s 29(2).

⁵⁵ FOIA 2011 s 29(3).

⁵⁶ FOIA 2011 s 29(4).

minority member of the Committee on Government Affairs and Judiciary of the Senate.

Although, the FOIA does not specify what the National Assembly is expected to do with the Attorney General of the Federation's report. It stands to reason that such information should inform their oversight duties and responsibilities as provided by the Constitution. 57

(xv) *Duty to Develop Reporting and Performance Guidelines*

The HAGF has a duty to develop reporting and performance guidelines in connection with the reports received from public institutions.⁵⁸ The HAGF is also empowered to establish additional requirements for such reports as it may determine useful. Whether this can be regarded as a general power to make regulations to give effect to the whole Act, or restricted to the making and issuing of reports, will depend on how it is construed. It is submitted that while this power is limited in scope and does not empower the HAGF to make binding Regulations, it can be relied upon to prescribe templates and issue applicable guidelines to ensure compliance with the Act.

(xvi) *Duty on the part of the HAGF to ensure that all public institutions comply with the Act*

The Act gives the HAGF oversight responsibility to ensure that all institutions to which it applies comply with it. How does the HAGF ensure compliance as envisaged under this provision? Can the HAGF, by means of a directive, compel public institutions to comply with the provisions of the Act or institute legal proceedings to compel compliance? It is posited that although granting such powers to the HAGF is reasonable, it is unclear how the Attorney General can exercise them without an express power to make binding regulations or, indeed, sanction erring public institutions. What if the Attorney General's Chambers is also in default of acceding to the request for disclosure of information? Who will watch the watch dog? It would appear that the Applicants will have only recourse to the Courts.

57 CFRN 1999, s.88

58 FOIA 2011 s 29(5).

4. GENERAL PROVISIONS

Apart from the provisions that create specific rights or impose duties, there are other general provisions that are germane to the effective implementation of the FOIA. These provisions are discussed in this part of the paper.

(a) *Scope of Application of the FOIA*

It is important to note that the FOIA applies to all public institutions. A public institution is any legislative, executive, judicial, administrative or advisory body of the Government, including boards, committees or commissions of the State which are supported in whole or in part by public funds or which expends public funds, and Private bodies providing public services, performing public functions or utilising public funds.⁵⁹ On the other hand, the Act does not apply to:

- i. published material or material available for purchase by the public;
- ii. library or museum materials made or acquired and preserved solely for public reference or exhibition purposes; or
- iii. 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 organisation other than a government institution.⁶⁰

The question of whether the FOI Act, 2011, applies to other tiers of government, such as States and Local Governments, has been the subject of intense debate and judicial scrutiny. In *Governor of Delta State v. Olukunle* ⁶¹, the Court of Appeal, in departing from its earlier decision in *Alo v. Speaker, Ondo State House of Assembly & Anor*,⁶², held that the FOI Act applies only to the Federal Government and its Agencies.

⁵⁹ FOIA 2011 s 31.

⁶⁰ FOIA 2011 s 26 (a) (b) (c).

⁶¹ (2020) LPELR-512(CA).

⁶² (2018) LPELR 45143 (CA).

This conflicting jurisprudence of the Court of Appeal was resolved by the Supreme Court in April 2025, in the case of *Austin Osakue v. Edo State Agency for the Control of AIDS* (EDOSACA)⁶³ where the court delivered a landmark ruling that settled the long-standing legal controversy surrounding the applicability of the Freedom of Information (FOI) Act, 2011. The case originated from an FOI request submitted by a coalition of civil society organisations. The request, filed on January 6, 2014, sought comprehensive records concerning the HIV/AIDS Programme Development Project (HPDP II), including financial expenditures, donor contributions, contract awards, and the criteria for grant allocations from 2011-2014. When EDOSACA failed to respond, the matter escalated to the courts. The Supreme Court overturned the 2018 ruling by the Court of Appeal, Benin Division, which had held that the FOI Act applied solely to federal Ministries, Departments, and Agencies (MDAs). It upheld the trial court's position, affirming that the National Assembly has the constitutional authority to legislate on matters relating to public records and archives.

Regarding whether the FOI Act, 2011, applies to private entities, the answer depends on the type of information and the private entity involved. The position of law is that private sector organisations that provide public services, use public funds, or perform public functions are subject to the provisions of the FOI Act. In the case of *Coscharis v. Media Rights Agenda*⁶⁴, which was an appeal by Coscharis challenging a Federal High Court decision ordering it to disclose information under the FOI Act to Media Rights Agenda / Enough Is Enough (EIE). The case concerned NCAA purchases and related expenditures, and whether a private entity (Coscharis) that benefits from or is involved in government business could be obliged to disclose under FOI. The Court of Appeal ruled that a private firm is subject to the FOI Act if it has a single transaction involving public funds. The court effectively held that a private company that receives public funds from a government agency is a public institution under the FOI Act. The implication of the case is that, while the FOIA generally does not apply to private companies, those that receive

63 SC/614/2014.

64 (2022) 2 CLRN 63.

funding from the public purse or provide a public service are bound by its provisions.

(b) *The obligation to provide training*

The rights created and the duties imposed by the FOIA are such that special training is required to equip public officials with the skills necessary to effectively and efficiently implement its provisions. Consequently, every government or public institution is enjoined by the Act to ensure appropriate training for its officials.⁶⁵ This means that the office of the Head of Service at the Federal and State levels must play prominent roles in effectively implementing the Act by providing the requisite training across the public service. The FOI units required to be established by the various MDAs must be staffed, trained, and equipped to render the services required by the Act. Experience has shown that there was significant enthusiasm for training when the FOIA was enacted, but the level of training has since decreased. Continuous training and retention must be emphasised for effective implementation, particularly as public officers are routinely posted to other responsibilities, and some retire from service.

(c) *Protections afforded by the FOIA*

The FOIA provides certain protections and guarantees to those who disclose and receive information. Public officers are protected against criminal proceedings for disclosures in good faith of any information, or any part thereof, pursuant to the Act, from any consequences that flow from the disclosure, or for the failure to give any notice required under this Act.⁶⁶ Similarly, nothing contained in the Criminal Code and the Official Secrets Act, 1962 shall prejudicially affect any public officer who, without authorisation, discloses to any person, any 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

⁶⁵ FOIA 2011 s 13

⁶⁶ FOIA 2011 s 27(1).

- (c) a substantial and specific danger to public health or safety, notwithstanding that such information was not disclosed pursuant to the provisions of this Act 67

The FOIA further protects those who receive and subsequently disclose such information.⁶⁸ It is important to note that these provisions are designed to assist public officers in embracing the new ethos of the FOIA and discarding the culture of secrecy promoted by the Official Secrets Act. Despite FOIA provisions, public officers occupying sensitive positions are sometimes required to swear Oaths of Secrecy. Whether this practice is legal will depend on the courts' interpretation in a challenge brought by the affected public officers.

5. IMPLEMENTATION ISSUES AND CHALLENGES

The FOIA has been in effect since 2011. Experience has shown that 14 years after, some implementation challenges have become glaring. These include:

(a) *Unclear or ambiguous provisions*

The import of some FOIA provisions is unclear or ambiguous. For instance, Section 11 deals with exemptions prohibiting the disclosure of information that borders on national security, which, if disclosed, will injure the country's defence. It, however, fails to define what constitutes 'national security' and thus opens the provision to subjective interpretations and speculations. ⁶⁹ Also worthy of note is the lack of a definition as to what constitutes 'public interest' within the meaning of the Act to guide public institutions in their decision-making regarding whether to disclose or refuse the disclosure of public information in their custody.

Furthermore, a closer reading of section 14(1)(b) reveals a conflict with section 2(3) (c) (vi) of the FOI Act. The provision requires public institutions to publish in a document the 'names, salaries, titles, and

⁶⁷ FOIA 2011 s 27(2).

⁶⁸ FOIA 2011 s 27(3).

⁶⁹ Omosede A Osawe, (n 33).

dates of employment of all employees and officers of the institution'. While the latter provision imposes a duty on the institutions, the former removes that duty, except in situations where the public interest far outweighs the reason for the refusal. Also, under sections 2, 3, and 25 of the Nigeria Data Protection Act, 2023, it appears that public institutions are required to obtain their employees' consent before disclosing such personal information.⁷⁰ The burden of proving that consent was sought and obtained lies on the institution processing the data. This presents a clog that could hinder the right of access to information, which clarity of the provisions will engender.

(b) *Organisation of records*

To effectively implement the FOIA, there must be a radical departure from how public records are kept. Accessing records and providing the necessary information within the time specified under the Act requires proper organisation of records in easily accessible formats and the eventual digitalisation of public records. Records must be available electronically to enable publication on the websites of the various MDAs and to facilitate easy transfer to those requesting such information.

(c) *Information Technology Infrastructure*

The requirement of an appropriate information technology infrastructure is closely related to the need to organise records into an easily retrievable format. While efforts are being made to provide the requisite infrastructure in the public service, the fact remains that there is a yawning gap between what is available and what is needed to do the job. Even where attempts have been made to provide the infrastructure, other variables, such as inadequate power supply, poor maintenance, and funding, have militated against the sustained use and maintenance of the information technology infrastructure.

(d) *Attitudinal change*

Implementing the FOIA requires attitudinal change. Public officers' reluctance or lack of desire to shift from a culture of secrecy to

⁷⁰ Madubuike-Ekwe, (n 13).

transparency persists 14 years after its enactment. The Head of Service and the Attorney General of the Federation must encourage and require public bodies to go beyond Servicom, establish and empower FOI units, and provide help lines for public use.

(e) *Inordinate use of exemptions to frustrate legitimate requests*

One of the most controversial aspects of FOIA relates to exemptions. Exemptions seek to prohibit the disclosure of information that may compromise essential interests, such as national security, confidential business information, personal information, and the internal deliberative process of government agencies before final decisions are reached. While there is no doubt that exemptions are necessary, the unprincipled use of exemptions can effectively undermine FOIA's objective, particularly when they are too broad or confer too much discretion on agencies.⁷¹ In this regard, the Guidelines issued by the Attorney General of the Federation can reduce the incidence of abuse and guide administrators on considerations of what amounts to "overriding public interest".⁷²

(f) *Right to request information and standing to initiate action to compel the provision of such information is liberalised under the FOI Act.*

This generally means that any person can invoke the right to access information. Since such a person does not need to demonstrate any special interest in the information required, the provision is susceptible to abuse, as public institutions may be inundated with frivolous or vexatious requests. The challenge is maintaining a delicate balance between the demands of the FOI Act, 2011 and the need to focus on the core mandate of the public body concerned. It is thus imperative for dedicated FOI Units to be appropriately resourced to deal with such requests.

71 for example sections 13 to 20 of the FOI Act 2011

72 See Chapter 3 of the Guidelines issued on the 15th of may 2012.

(g) *The Official Secrets Act and FOIA*

Implementing the FOIA demands a careful review of the provisions of the Official Secrets Act (OSA), 1962. The point to note is that the FOIA has not repealed the OSA provisions. What it has done is to repeal those provisions of the OSA that are inconsistent with FOIA. The challenge for public officials is to distinguish between those provisions of the OSA that are still valid and those that have become obsolete in light of the FOIA, remembering at all times that the FOIA favours disclosure and decriminalises pro-disclosure acts that the OSA may have sanctioned. This calls for a review of the OSA to bring it into conformity with the FOIA and for other administrative guidelines and processes to be put in place to ensure that the classification of information made pursuant to the OSA is reviewed accordingly to engender disclosure of information subject to recognised exemptions.

6. CONCLUSION

The discussion has revealed that progress has been made in protecting the right to access information in Nigeria over the last 14 years, with the regime of rights and duties on public institutions under the FOIA. It has examined the practical implications and extent of the rights and duties contained in the Act. Ultimately, creating open government is a desirable end that Nigerians must collectively pursue, despite the challenges identified in its implementation. The FOI Act, like any human creation, is not perfect legislation; however, it is expected that all public institutions will strive to implement its provisions as the gradual process of reviewing and reshaping the Act continues. In this regard, it may be necessary to review the time limit for disclosing information under the Act from 7 to 21 days to address the practical problems inherent in the existing provision. The provision of an administrative mechanism in the form of an Information Commissioner to deal with complaints should be considered, and the Attorney General of the Federation should be expressly empowered to make regulations to give effect to the Act and ensure compliance with its provisions.