
FOI Act and Journalism Practice in Nigeria: An Appraisal

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Abstract

This discourse focused on the Freedom of Information (FOI) Act and journalism practice in Nigeria. We discussed, within the framework of Diffusion of Innovation Theory, the FOI Act in terms of its history, features and implications for journalism practice in Nigeria, and how much it has been harnessed by practitioners, challenges encountered in this regard and future prospects. We found that the benefits which the FOI Act is envisaged to bring to journalism practice include legal coverage for the journalist as they access information; reduction in cost of accessing information; and reduction of risk involved in seeking sensitive information. An assessment of the implementation of the FOI Act shows that there has been an encouraging increase in the number of individuals and organisations demanding for information pursuant to the provisions of the Act. However, these individuals and organisations are largely outside the media industry, implying that there is apparent reluctance on the part of Nigerian journalists to harness the FOI Act. Factors adversely affecting utilization of the FOI Act in Nigeria include the legal, political and judicial factors as well as poor culture of investigative journalism in Nigeria; while measures that could be taken towards a better future performance include legal reforms, political commitment, judicial reform and more vibrant use of the FOI Act by journalists and other members of the public alike. We concluded that the failure of Nigerian journalists to harness the FOI Act has far-reaching implications for press freedom, given that right to access of information is a critical component of freedom of the press. It was recommended that stakeholders – journalists, government and civil society – should cooperate to achieve an optimal utilization of the FOI Act.

Introduction

The freedom of information law is a class of legislations(s) which seeks to give members of the public access to public information. It is a globally accepted form of legislation seen to be of value in promoting public accountability and democracy (Abone & Kur, 2014).

The term Freedom of Information, also known as Access to Information Law, refers to a citizen's right to access information that is held by the state. It is the ability of citizens of a country to have free access to information enabled by legislation. In many countries, this freedom is supported as a constitutional right. FOI obliges the government to disclose as much as is possible about its workings. "The argument behind this is that if a democracy is to function effectively, its citizens must be fully informed as to how it operates" (Omotayo, 2015, p.24).

When Freedom of Information is backed by legislation, such legislation is usually known as the Freedom of Information Law. The freedom of information legislation has its basis in the fundamental human rights of every individual to hold opinion and express him/herself freely (Onwubere, 2013). The Article 19 of the United Nations' Declaration of Human Rights (1948)

provides that “Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.” Based on this philosophy, Freedom of Information legislation seeks to advance the citizen’s right to know and to communicate by guaranteeing him/her access to public information as observed by Ajibade (2017):

Freedom of information legislation comprises laws that guarantee access to data held by the state. They establish a “right-to-know” legal process by which requests may be made for government-held information, to be received freely or at minimal cost, barring standard exceptions. Also variously referred to as open records or (especially in the United States) sunshine laws, governments are also typically bound by a duty to publish and promote openness. In many countries there are constitutional guarantees for the right of access to information, but usually these are unused if specific support legislation does not exist (p.1).

The origin of the freedom of information laws of most countries can be traced to the action of a man named Anders Chydenius, from Finland, about 250 years ago. Chydenius fought for democracy, equality and respect for human rights under the principle of public access to government information. This led to the promulgation of the Freedom of Information law in Sweden which from 1766 became a part of the present Swedish Constitution of 1974. Another country to have freedom of information as a constitutional provision before the 19th century was Colombia. However, by 1990, over 13 countries had freedom of information as part of their laws and by 2008, over 70 countries had adopted it globally. As at December 2015, more than 130 countries have the law either as a constitutional provision or as extant domestic law (Ajibade, 2017). Other countries that have implemented one form of this law or another include: Albania, Armenia, Australia, Belgium, Belize, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, China, Columbia, Czech Republic, Denmark, Estonia, Finland, France and Germany (Onwubere, 2013).

As stated earlier, the primary purpose of the freedom of information legislation is to enthrone accountability in the public domain. Fasugba (2009) describes the legislation as “a critical catalyst for public accountability”, arguing that its absence would potentially breed corruption and dictatorship.

However, freedom of information legislation does not offer unlimited access to information. Certain restrictions are put in place in the interest of public safety, state security, economic security and the rights of individuals. Similarly, “most freedom of information laws excludes the private sector from their jurisdiction. Information held by the private sector cannot be accessed as a legal right” (Omotayo, 2015, p.24).

Importantly, it is to be noted that freedom of information legislations, though especially useful to journalists, are for every person who as a citizen should know what his/her government is doing.

Every citizen is concerned about how his/her government spends the tax payer’s money, how its officials live up to their oath of office and how the public affairs are generally managed.... For this reason, freedom of information laws are made to guarantee the citizens the right to ask and be told (Fasugba, 2009, p.123).

Hence, Freedom of Information law is a public accountability-oriented legislation aimed at making public information accessible to citizens as a matter of legal right. In other words, its essence is to legally empower the citizen to demand for and have public information.

Historical Overview of the Freedom of Information Act in Nigeria

The evolution of the freedom of information legislation in Nigeria stretches over a fairly long time. The Republican Constitution of 1963 was the first Nigerian constitution to incorporate fundamental human rights in its provisions, and among these is the right to freedom of expression and dissemination of information (Eyiyere, 1993). This provision re-occurred in the subsequent constitution of 1979 and the current 1999 Constitution.

While there has, all the while, been some constitutional guarantee of press freedom, no specific legislation had before now clearly addressed the citizens' right to access to information. It is precisely for this reason that a group committed to ensuring the entrenchment of this right – the Freedom of Information Coalition (FOIC) – was formed in September, 2000. This was following what became the first stakeholders meeting on the Freedom of Information Bill held at Rockview Hotel, Abuja, from September 13 to September 15, 2000 (Freedom of Information Coalition, 2011).

The meeting, which was declared open by the then Minister of Information and National Orientation, Prof Jerry Gana, was attended by 42 persons in all, representing various interest groups, including legislators from the National Assembly, the Academic Staff Union of Universities (ASUU), the Nigerian Labour Congress (NLC), the Federal Ministry of Information and National Orientation, the United Nations Information Centre (UNIC) in Nigeria, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Nigeria Union of Journalists (NUJ), the Newspapers Proprietors Association of Nigeria (NPAN), the Nigeria Guild of Editors (NGE), among other interest groups.

After brief presentations by various participants on the significance of institutionalizing access to information in the country, it was decided that the Freedom of Information Coalition (FOIC) be formed. The objective of the group is to, through advocacy and public sensitization; pursue the passage of a Freedom of Information bill in the country.

Not long after this meeting, a draft Freedom of Information (FOI) bill was presented before both Houses of the National Assembly. The bill was after some months passed but could not become law as it was vetoed by President Olusegun Obasanjo who withheld his assent. His objection to the bill was that it did not put sufficient checks in place to ensure that certain sensitive information of the state doesn't get into unwanted hands (Idowu, 2011). Thus began a fresh but long walk to a Freedom of Information regime.

The FOIC continued with its campaign in the form of lobbying, advocacy and sensitization. A lot of representations were made to the government and seminars, workshops and other forums organized.

It was to take a little more than a decade for the goal to be finally attained. The harmonized version of the FoI Bill was on May 24, 2011 passed in both the Senate and the House of Representatives. On May 27, President Goodluck Jonathan gave his assent to make the document a full-fledged statute. Thus, it became the *Freedom of Information Act 2011*.

Theoretical Framework

Diffusion of Innovation theory (DIO) developed by E. M. Rogers in 1962, is one of the oldest social science theories. It originated in communication to explain how over time an idea or product gains momentum, and diffuses (spread) through a specific population or social system. The key adoption is that the person must perceive the idea, behaviour or product as new or innovative. It is through this that diffusion is possible.

The Diffusion of Innovation (Multiple Step Flow) explains how ideas are spread. According to Rogers (1996), diffusion refers to the process by which an innovation is communicated through certain channels over time among the members of a social system. Innovation is an idea, practice or object perceived as new by an individual or other unit of adoption of innovation involves both mass media and interpersonal communication channels.

Rogers further summarizes members of the social system innovative decision as a five step process that include:

- 1. Knowledge** – A person becomes aware of an innovation and has some idea of how it functions.
- 2. Persuasion** – A Person forms a favourable or unfavourable attitude toward the innovation.
- 3. Decision** – A Person engages in activities that lead to a choice to adopt or reject the innovation.
- 4. Implementation** – A Person puts an innovation into use.
- 5. Confirmation** – A Person evaluates the results of an innovation-decision already made.

Diffusion is the process of spreading a given idea or practice over time, via specific channels, through a social structure such as neighbourhoods (Katz, Levin & Hamilton, 1963). Their work on the diffusion of innovations records that for a new idea or innovation to diffuse, there must be:

- i.** Awareness stage
- ii.** Interest stage
- iii.** Evaluation stage
- iv.** Trial and adoption stage.

Different types of innovations require different kinds of adoption units Bittner (1984) recognizes that the media can lead someone into getting aware of the existence of an item. From there he gets interested in, makes attempt to evaluate it, and gives it a trial before making up his mind to acquire it.

The diffusion of innovation theory by Rogers (1983) was set to examine how new ideas are spread among people through the media. It is a theory that seeks to explain how, why and at what rate new ideas and technology spread through cultures.

Adoption of a new idea, behaviour, or product does not happen simultaneously in a social system; rather it is a process whereby some people are more apt to adopt the innovation than others. Everett Rogers, a professor of rural sociology popularized the theory in his 1962 book; Diffusion of innovation. The categories of adopters are; innovators, early adopters, early majority, late majority, and laggards (Rogers, 1962).

The change agent centre's around the conditions which increase or decrease the likelihood that a new idea would be adopted or not. That is to say, they help the audience in deciding on the

best idea to adopt by influencing their option about a particular situation. Hart (1975) and Wise (1982) think that a great deal of media use is actually habitual and unselective. It relates the usefulness of the media and to what extent it can affect man.

The Freedom of Information (FOI) Act represents a notable innovation within the sphere of journalism practice in Nigeria. Adopting this innovation involves becoming aware of the law, gaining knowledge of its provisions and purpose and then duly applying it. Thus, the diffusion of innovation theory may help to explain the extent to which journalists in Nigeria are aware of the provisions of FOI Act and how much they have explored them towards enhancing their practice. As such, diffusion of innovation in relation to Freedom of Information (FOI) Act in Nigeria could be seen to operate via the following steps.

- **First Step: Awareness and knowledge of the FOI Act** – The individual journalist becomes aware and understands the Freedom of Information (FOI) Act, its provisions and the implications to journalism practice as well as how to utilise it in advancement of one's practice.
- **Second Step: Forming attitude towards the FOI Act** – The individual begins to develop perceptions and judgment towards the Freedom of Information (FOI) Act. Positive perceptions and judgment make it more likely that the journalist will go ahead to utilise the Act.
- **Third Step: Action towards the FOI Act** – The individual journalist begins to act towards the Freedom of Information (FOI) Act; this is where the adoption proper occurs as the individual and groups begin to apply the law towards advancing their practice.

1.3. The Provisions of the Nigeria's FOI Act 2011

The *Freedom of Information Act 2011* as assented to by President Goodluck Jonathan on May 27, 2011 has the following as its long title:

An Act to make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and; for related matters.

The Act comprises 32 sections with tens of sub-sections. It addresses a wide spectrum of issues relating to people's right of access to public records. It provides for the classes of information that should be open to public access; the procedure for accessing such information; classes of information that is not covered by the right to access; punishment for unlawfully refusing access; and procedure for pursuing redress when information is denied, among others. We shall now examine the vital provisions of this Act one after the other.

i. Right of Access to Public Information

The Act in its section 1(1) grants everyone the right "to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution." It further provides that an applicant for such information "needs

not demonstrate any specific interest in the information being applied for,” and that such person “shall have the right to institute proceedings in the Court to compel public institution to comply with the provisions of this Act” (Section 1 [2 and 3]).

ii. Records of Information to be kept by Public Institutions

The section 2 of the Act makes it mandatory for a public institution to keep proper records about all its activities, operations and businesses, and in a manner that facilitates public access to such information. In addition to this, it shall publish among others the following information:

- A description of the organization and responsibilities of the institution including details of the programmes and functions of each division, branch and department of the institution.
- A list of all classes of records under the control of the institution in sufficient detail to facilitate the exercise of the right to information.
- A list of manuals used by employees of the institution in administering or carrying out any of the programmes or activities of the institution.
- Documents containing the substantive rules of the institution, statements and interpretations of policy which have been adopted by the institution; information relating to the receipt or expenditure of public or other funds of the institution; the names, salaries, titles, and dates of employment of all employees and officers of the institution; and reports, studies, or publications prepared by independent contractors for the institution.

It is a criminal offence punishable on conviction with a minimum of one year imprisonment for any officer or the head of any government or public institution to wilfully destroy any records kept in his custody or attempts to doctor or otherwise alter same before they are released to any person, entity or community applying for it (Section 10).

iii. Applying for and Getting Public Information

A person who desires to get any public information shall apply in the specified manner to the institution having the custody of such information. Illiterate or disabled applicants who by virtue of their illiteracy or disability are unable to make an application may make their application through a third party (Section 3[1-3]). An authorized official of a government or public institution to whom an applicant makes an oral application for information or record, shall reduce the application into writing in the prescribed manner and shall provide a copy of the written application to the applicant.

Within seven days after an application is received, the concerned public institution shall, subject to certain provisions of the Act, either make the information available to the applicant or refuse such access.

iv. Denial of Application for Information

Where the government or public institution refuses to give access to a record or information applied for under the Act, the institution shall state in the notice given to the applicant the grounds for the refusal, the specific provision of this Act that it relates to and that the applicant has a right to challenge the decision refusing access and have it reviewed by a Court. Such notification of denial shall state the names, designation and signature of each person responsible for the denial (Section 7[1-2]).

Where it is eventually established that access was wrongfully denied to the applicant, the defaulting officer or institution is guilty of an offence and is liable on conviction to a fine of N500,000.00 (Section 7[7]).

v. Classes of Information on Which Access “May” be Denied

According to sections 11, 12, 16 and 17 of the Act, a public institution may deny an application for access to any of the following classes of information:

- Any information the disclosure of which may be injurious to the conduct of international affairs and the defence of the Federal Republic of Nigeria.
- Information that may interfere with pending or actual law enforcement proceedings conducted by any law enforcement or correctional agency,
- Information that may interfere with pending administrative enforcement proceedings conducted by any public institution.
- Information that may deprive a person of a fair trial or an impartial hearing.
- Information that may unavoidably disclose the identity of a confidential source.
- Information that may constitute an invasion of personal privacy except, where the interest of the public would be better served by having such record being made available.
- Information that may obstruct an ongoing criminal investigation.
- Information the disclosure of which could reasonably be expected to be injurious to the security of penal institutions.
- Information that is subject to the following privileges: legal practitioner-client privilege; health workers-client privilege; journalism confidentiality privileges; and any other professional privileges conferred by an Act.
- Information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies on the commission of any crime.
- Information pertaining test questions, scoring keys and other examination data used to administer an academic examination or determine the qualifications of an application for a license or employment.

Notwithstanding the above exceptions, an application for information shall not be denied where the public interest in disclosing the information outweighs whatever injury such disclosure would cause.

vi. Classes of Information on Which Access “Must” be denied

According to sections 13 and 14 of the Act, a public institution must deny an application for, among others, the following classes of information:

- Files and personal information maintained with respect to clients, patients, residents, students, or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from public institutions.
- Personnel files and personal information maintained with respect to employees, appointees or elected officials of any public institution or applicants for such positions.
- Files and personal information maintained with respect to any applicant, registrant or licensee by any government or public institution cooperating with or engaged in professional or occupational registration, licensure or discipline.

- Information required of any tax payer in connection with the assessment or collection of any tax unless disclosure is otherwise requested by statute.
- Information relating to trade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of such trade secrets or information may cause harm to the interests of the third party.
- Information the disclosure of which could reasonably be expected to interfere with the contractual or other negotiations of a third party.
- Information relating to proposal and bids for any contract, grants, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person.

vii. Court Procedure Following Denial of Access to Information

Sections 20 – 25 of the Act relates to court procedure following denial of information to an applicant. Any applicant who has been denied access to information, or a part thereof, may apply to the court for a review of the matter within 30 days after the public institution denies or is deemed to have denied the application, or within such further time as the court may either before or after the expiration of the 30 days fix or allow. Such an application shall be heard and determined summarily.

In taking its decision, the court shall examine the information in question, and in taking evidence, shall take precaution to avoid disclosure of certain information in public. Thus, the court may order that hearing shall be in the chamber rather than in the open court.

Where a public institution denies an application for information, or a part thereof on the basis of a provision of the Act, the Court shall order the institution to disclose the information or part thereof to the applicant if it finds that the institution is not authorized to deny the application for information; that the institution does not have reasonable grounds on which to deny the application; or that the interest of the public in having the record being made available is greater and more vital than the interest being served if the application is denied.

viii. Submission of Reports to the Attorney General

The section 29 of the Act makes it mandatory for every public institution to, on or before February 1 of each year, submit to the Attorney-General of the Federation a report which shall cover the preceding fiscal year as to how it has complied with the provisions of the *Freedom of Information Act*. This report shall reflect, among others, the following:

- The number of times the institution has determined not to comply with applications for information made to it.
- The number of appeals made by persons under the Act, and the reason for the action upon each appeal that results in a denial of information.
- A description of whether a court has upheld the decision of the public institution to withhold information under such circumstances and a concise description of the scope of any information withheld.
- The number of applications for information pending before the public institution as of October 31 of the preceding year and the median number of days that such application had been pending before the public institution as of that date.
- The number of applications for information received by the public institution and the number of applications which the public institution processed.

- The number of days taken by the public institution to process different types of application for information.
- The total amount of fees collected by the public institution to process such applications.
- The number of full-time staff of the public institution devoted to processing applications for information, and the total amount expended by the public institution for processing such applications.

The Attorney-General shall make each report, which has been submitted to him, available to the public in hard copies, online and also at a single electronic access point. He is also to submit to the National Assembly an annual report on or before April 1 of each calendar year which shall include (for the prior calendar year) a listing of the number of cases arising under this Act, the exemption involved in each case, the disposition of such cases, and the cost, fees, and penalties assessed. Such report shall also include detailed description of the efforts taken by the Ministry of Justice to encourage all government or public institutions to comply with this Act. It is also his duty to ensure that all government institutions comply with the provisions of the *Freedom of Information Act*.

The FOI Act as a Facilitator of Journalism Practice

Though Freedom of Information (FOI) legislation is not meant specifically for journalists, it is accepted globally that it is of some special benefit to journalism (Fasugba, 2009; Nsereka & Ammanah, 2014). This is against the backdrop of the fact that journalists, by virtue of the nature of their calling, are always in need of such information which the FOI legislation seeks to liberalise access to. In Nigeria, this role of the FOI legislation for journalism has been viewed being as of particular importance given the nation's relatively poor press freedom credentials including as it relates to access to information. Commenting on his experience as one of the reporters jailed for the alleged 1995 coup against late Gen. Sani Abacha, Ajibade (2002) bemoans what he terms "unrepentant intolerance for truth by successive Nigerian governments, such that government officials arbitrarily veil themselves with iron curtain... anybody poking into their affairs is to be crushed (p.49)." He avers that government in Nigeria is now "run like a private estate."

Incidentally, the quest for a freedom of information legislation in Nigeria has its basis in this systemic deficiency According to Freedom of Information Coalition (2011):

The struggle for the passage of the FoI bill was born out of the conviction that transparency in governance would be most enhanced when free access is permitted to the citizens in regard to public information. The primary concern is of course on journalists who over the years have battled against too many odds in their quest to effectively report some of the on-goings in the public sphere – particularly those of them which the concerned public officials have in their arbitrariness decreed a no-go area (p.11)

With the FOI Act now a reality in Nigeria since 2011, what are the exact benefits?

Legal Coverage for the Journalist

Governments, particularly dictatorial ones, tend to restrict journalists' access to public information. Sometimes, this is facilitated by laws such as Official Secrets Act and the like (Akinwale, 2010; Ajibade, 2017). However, with a freedom of information legislation, this

trend could be reversed. Journalists may be saved from the burden of facing risk of legal penalty for obtaining certain information. For instance, in 1984, two journalists, Nduka Irabor and Tunde Thompson were tried and jailed by the military junta for refusing to divulge their source of information (Azeez, 2012). Such criminalisation of journalists for merely accessing information which government is not comfortable with is totally eliminated when access to such information is legalised. Stated differently, such legalisation gives coverage to the journalist as he/she seeks for information.

Reduction in Cost of Accessing Information

When there is no free access to information, getting such information could become costly. This is because one would have to keep trying in the attempt to obtain such information and such process may involve repeated travels or phone calls and which would definitely amount to monetary expenditures (Azeez, 2012; Apuke, 2017).

However, with Freedom of Information (FOI) Act in place, obtaining public information is expected to become a lot easier, less cumbersome and faster. This will naturally cut down significantly the cost of obtaining such information.

Reduction of Risk Involved in Seeking Sensitive Information

Absence of free access to information would imply that a journalist may have to employ all sorts of dangerous means to “steal out” information from public quarters and which might expose him/her to all manner of risk. This situation is aptly captured by Abone and Kur (2014):

The free flow of information has been tampered with. Journalists have had no access to vital information let alone the masses. In struggling to get detailed, factual and balanced reportage, journalists have had to continue to nose around for information, exposing themselves to high levels of risk that got them victimized, jailed, tortured and sometimes killed (p.24).

However, with the FoI Act, this threat could be removed, or at least significantly reduced. This is for the reason that the provisions of this legislation, if conscientiously applied, would make sourcing of official information a less adventurous task than it has been in the country (Azeez, 2012, p.2). On this Garba (2013) observes that the journalist who in the past had to battle with legal and institutional obstacles as represented by the Official Secrets Act and other legislations relating to state security while sourcing for official information “now has a leeway by virtue of the Freedom of Information Act.” He comments further:

Neither the journalist nor the public official is now in any reasonable risk of jail for merely divulging information that would have otherwise been concealed in the veil of state security. While one acknowledges that there exist genuine cases where certain information ought to be made secret in the overriding public interest, the tendency to hide behind this possibility to deny genuine access to information ought to be curtailed through the instrumentality of a law like this

Summarising the above submissions, Idowu (2011), argues that “an FoI law would ease the journalist of this burden of insecurity, illegality and ethical dilemma in sourcing for information ... investigative journalism then becomes more convenient and more productive.”

Implementation of the FOI Act: An Assessment

According to Omotayo (2015), some successes have been recorded with regard to the implementation of the FOI Act in Nigeria. He notes further:

There has been an encouraging increase in the number of individuals and organisations demanding for information pursuant to the provisions of the Act. There have also been varied reactions by public institutions to requests for access to information that range from outright and unsubstantiated refusal, to delays in granting requests (p.13)

Reported instances of testing the law, have come mainly from civil society organisations. Some civil society organizations such as National Human Rights Commission (NHRC), Legal Defence and Assistance Project (LEDAP), Progressive Shareholders Association (PSA), Socio-Economic Rights and Accountability Project (SERAP), Civil Society Network Against Corruption (CSNAC), Media Rights Agenda (MRA), Socio-Economic Rights and Accountability Project (SERAP), Citizen Assistance Centre, Right to Know (R2K), among others have been using the FoI Act to demand for information, accountability and good governance in Nigeria. However, majority of these request end in lawsuits (Omotayo, 2015).

According to Omotayo (2015), R2K reported that it had made several requests to public institutions for information pursuant to the Act. In June 2012, R2K made a request for a copy of air crash investigation reports not currently available on the Accident Investigation Bureau Official Website. Also, in seeking to test and evaluate the implementation of the Act, R2K made requests to Ministries, Departments and Agencies (MDAs) of government for copies of their statutory FoI reports as mandated by the FoI Act 2011 in section 29 (1) which provides that on or before February 1 each year, every public institution must submit to the Attorney-General of the Federation a report on the Institutions implementation of and compliance with the FOI Act covering the preceding fiscal year. There were also requests made to the Attorney General for copies of all the annual FOI compliance reports that have been submitted to that office and a copy of the annual report submitted by the Attorney General to the National Assembly pursuant to the sections 29 (7) and (8) of the FOI Act 2011.

Omotayo (2015) notes further that the cases that have been taken to court in which a request for information was denied or simply ignored, have recorded positive responses from the judiciary. The very first reported lawsuit was the case instituted by the Committee for the Defence of Human Rights (CDHR) against the Economic and Financial Crimes Commission (EFCC) in August 2011 in Abuja, seeking an order to compel EFCC to provide information substantiating an allegation made against it.

Similarly, it was reported that Nigerian National Petroleum Corporation (NNPC) denied a request made by *Daily Trust* Newspapers. The Corporation wrote back to the newspaper that it was not bound by the FOI Act, as it was not a statutory corporation. However, following media scrutiny and pressures from civil society organizations, the NNPC eventually pledged its commitment to abide by the provisions of the FOI Act. Other refusals have led to the institution of legal proceedings to compel public institutions to grant requests for access to information. In January 2012, two civil society groups, Socio-Economic Rights and Accountability Project (SERAP) and Women Advocates Research and Documentation Centre (WARDC) sued the governor of the Central Bank of Nigeria (CBN) over a failure to release

information and documents on the authorization by the CBN of over N1.26 trillion as subsidy for 2011 after the statutory period for granting requests (Omotayo, 2015; Ajibade, 2017).

The FOI Act recorded its first reported victory through a judgment delivered by the Federal High Court in Abuja on June 25, 2012 when the Judge ordered the National Assembly to disclose information on the detailed earnings of her members. A non-governmental organisation, Legal Defence and Assistance Project, whose application was initially turned down by the Clerk of the National Assembly, had specifically requested the details of the salary, emolument and allowances paid to all members of the House of Representatives and Senators, from June 2007 to May 2011 (Apuke, 2017).

Likewise, the Central Bank of Nigeria was ordered by a Judge to release information about asset forfeited by a former Managing Director of a defunct bank in Nigeria. The Central Bank, exercising its powers under the Central Bank of Nigeria Act, had fired the executive directors of five Nigerian banks for borderline fraudulent acts and mismanagement of bank resources. The affected bankers were also prosecuted by the EFCC, which, in collaboration with the Central Bank, sought to recover some of the assets that they had allegedly stolen. However, there were questions about the manner in which the recovery of the assets was being handled, particularly the apparent lack of consideration for the rights of the affected banks' shareholders. The Progressive Shareholders Association of Nigeria wrote to the Central Bank requesting information relating to the recovery of the defunct bank's assets. When the Central Bank refused to disclose the information requested by the association, a suit was instituted against it under the FOI Act. The basis for the request was that taxpayers' money was being used for the prosecution of the banks' chiefs and the reform process. However, the Judge refused the prayers of the applicant seeking the court to compel the CBN to also release information on how much was paid to professionals and professional bodies which the apex bank had been using in prosecuting its bank reform policies representing it on the grounds that such information enjoyed client-attorney privilege and was protected under Section 16 of the FOI Act 2011(Omotayo, 2015).

Against the backdrop of the foregoing, Omotayo (2015) observes that the "rulings of the courts on the need for the public institutions to comply with requests for information are commendable, and are in the spirit of transparency and accountability" (p.17). He, however, regrets that these rulings had wasted a so much time in coming, a situation that could discourage people from demanding for information under the FOI Act.

It has been contended that the purpose of the FOI Act will be better served if public institutions on their own volunteer information when approached for that rather than waiting for the court to compel them to do so. This is because having to go through courts to obtain order for release of information makes information access cumbersome and time-wasting and could adversely affect people's confidence in the entire process of information access (Onwubere, 2013; Garba, 2013; Nsereka & Ammanah, 2014).

But curiously, the above instances of attempt to harness the FOI Act had involved non-journalistic institutions. In fact, with the exception of the case involving *Daily Trust* and NNPC, all other instances of request for information under the Act had involved NGOs as against media practitioners. Does it then mean that the media practitioners lack awareness or motivation to harness this legislation? Hence, the next section assesses use of the Freedom of Information (FOI) Act by journalists in Nigeria.

Use of the FOI Act by the Nigerian Journalist

The story of the quest for a freedom of information law in Nigeria cannot be told without mentioning the Nigerian journalist who according to Ajibade (2010), “has for decades yearned for freedom.” Arguing that the FOI law is a fundamental element of press freedom, he writes further:

As a journalist, I have spoken and acted the way I have done all this while in support of the FOI bill simply for my belief that it will be a most decisive step in our quest for press freedom... My experience in this profession has taught me that the freedom of the journalist goes far beyond mere freedom from molestation to include the power to seek and obtain information, particularly from the public sector (p.2).

Arguably, the Freedom of information (FOI) Act comes with a lot of benefits to the Nigerian journalist as he/she seeks to advance his/her reportorial duties but especially in an investigative context. First is that investigative journalism thrives where there is a free access to information for the journalist. Thus, the passage of the Freedom of Information Act opens a new vista of possibilities for journalism in Nigeria vis-a-vis investigative reportage. Discussing why the law became important in the first place, Mohammed Garba, former President Nigeria Union of journalists (NUJ) agrees that it is crucial in assisting the media play their watchdog role for the benefit of the whole society:

Nigeria’s Freedom of Information Act is a product of popular unhappiness with the level of corruption in the economic system. The corruption-menace has denied Nigerians access to basic opportunities...The quest for national transformation in Nigeria has been protractedly hampered by corruption. The unwholesome and criminal culture of looting the public purse for personal satisfaction is a major reason for the relentlessness with which we fought for the birth of FoI in Nigeria because as journalists we will become better empowered to investigate some of these things and report them to Nigerians (Garba, 2011).

Bankole cited in Azeez (2012) agrees with the foregoing submission. He avers that such (investigative) reportage which “dares the secretive tendencies of public officials” has, prior to the passage of the FoI Act, not become emphatically entrenched in the country. This he attributes to lack of a definitive legal framework for enforcing citizen’s right to information:

From earliest times, evil has been sustained by its affinity with darkness. When leaders know that they live in the glass house and all their activities are under scrutiny, good governance would be achieved. Openness had been denied in the past in Nigeria but the FOI Act has now made it a right. In other words, openness is an incentive to good governance, not a threat, and the more people know the rationale behind the activities of the government, the more they get carried along in government policies and programmes. The press has now become more empowered towards scrutinising our leaders, and everybody would hopefully benefit from this.

But in spite of the enormous possibilities envisaged in regard to the FOI Act, there appears to be reluctance on the part of Nigerian journalists to harness this piece of legislation. In fact, Dunu and Ugbo (2014) opine that what obtains is a situation of seeming “gross under-utilization” of the “enormous power bestowed on the media (and on the journalists working in

the media) as both the purveyors of public information and watchdog of the society” by the Freedom of Information Act (p.1). in their assessment of the Nigerian journalists’ knowledge, perception and use of the FOI Act in the discharge of their (information) responsibility to the public, the authors found that despite the awareness of the FOI Act amongst all the journalists interviewed “greater majority have never made use of the law in the discharge of their journalistic responsibilities” (p.9).

Other studies such as Abone and Kur (2014) and Nnadi and Obot (2014) also show the same apparent poor use of the Freedom of Information (FOI) Act by journalists in Nigeria. All this goes to confirm the allegation of Ajibade (2017) that all the euphoria that followed the passage of the Act in 2017 seemed to have dissipated following the apparent poor realisation of the objectives of the law so far.

But what in actual fact has hampered effective utilization of the Freedom of Information (FOI) Act by Nigerian journalists? What factors have been responsible for the seeming under-harnessing of this Act in spite of all the optimism that preceded and followed its passage?

Challenges of the FOI Act in Nigeria

FOI Act has not been satisfactorily utilized by journalists in Nigeria (Dunu & Ugbo, 2014; Abone & Kur, 2014; Nnadi & Obot, 2014; Ajibade, 2017). This necessarily throws up the question of what factors could be behind the trend. These factors are highlighted as follows:

The Legal Factor

It has been pointed out that the implementation of the FOI Act has been hampered by some legal factors. The framing and provisions of the Act itself is a factor here. A study by Apuke (2017) reveals that the Freedom of Information (FOI) Act “contains more exemption sections and clauses than sections that grant access to information. This means that some mischievous public officers can use these sections for unjust and mischievous purposes” (p.2); Onwubere (2013) also observes this shortcoming when he notes that the Act “contains more exemptions on the very crucial areas of public interest than the general areas of need [which] is definitely not in favour of public interest” (p.117).

Another observed weakness in the FOI Act is that it has no provisions specifically addressing the interest of journalists. Onwubere (2013) avers thus:

The lack of immunity or any specific right or and protection for journalists makes the provisions of the Act incomplete. The Act clearly jeopardises the aspirations of the journalists for a free press. The sections on exemption (Sections 12, 13-15, 16-18, 28 & 29) are the main areas of press interests, particularly, S29 which further emphasises the secrecy of “the classified documents” (p.177).

Also of adverse effect on the full functionality of the FOI Act is the issue of existence of some other media laws that tend to negate the spirit of the FOI Act. Instances include the Official Secrets Act, Evidence Act, the Public Complaints Commission Act, the Statistics Act, and the Criminal Code Act which all have provisions that tend to contradict the very goals aimed by the FOI Act (Apuke, 2017). Instructively, a study by Nsereka and Ammanah (2014) found that “the FOIA has the potency to engender effective media practice ... (but) can only function effectively when anti-press laws are either expunged or amended” (p.93).

The Political Factor

Optimal realisation of the benefits of the FOI Act fundamentally requires the cooperation of the political class and all public servants who have custody of public records. In other words, there is the need for the political will on the part of the officers of the state for this piece of legislation to experience effective implementation. Omotayo (2015) thus laments that the “pervasive” rate at which requests for access to information are turned down by public officers and how public institutions who respond to requests do that beyond the statutory seven-day limit provided for by the FOI Act. For instance, when the Right to Know (R2K) made a request to the Attorney-General of the Federation for copies of all the annual FOI compliance reports that have been submitted to that office and a copy of the annual report submitted by the AGF to the National Assembly pursuant to the sections 29 (7) and (8) of the FOI Act, it took over a month to receive the response.

Consequently, the political will to implement the FOI Act on the part of the leadership and the state bureaucracy is critical. Against this drop, *Daily Sun* newspaper, in its editorial of Tuesday, June 14, 2011, appeals in this regard:

... it is one thing to have a law, it is another to implement it. We are sure people who love and relish the old arcane and cultic order will erect stumbling blocks before this new law. It will not be in the interest of our country. Therefore, government, the media, non-governmental organisations, indeed, all stakeholders, should follow up the legislation with the necessary backups for implementation. Government, for instance, should immediately repeal all the laws which run contrary to the new one on freedom of information. The states of the federation equally need to concur with the law, and we urge them all to do that expeditiously

The Judicial Factor

The fact that application can be made to court when a request for information is turned down brings the judiciary into the very core of the operation of the FOI Act. Consequently, the transparency, efficiency and speed with which the judiciary disposes of such applications will be critical to realisation of the envisaged benefits of the Act. Thus, it becomes worrisome that the court processes in Nigeria are everything but fast. Omotayo (2015) observes that the cumbersome and time consuming process of dragging requests for information through the Courts has a potentially negative effect on the utility of the information requested because of the time value of information. Apart from the length of time it would take for litigations and appeals, there is also the considerable expense of the entire legal process, from the High Courts to the Court of Appeal and Supreme Court, the monetary implication which may be far beyond the reach of many ordinary Nigerians. This will discourage citizens from making requests under the FOI Act.

Again, corruption in the judiciary is another hindering factor. Not only will it deprive people of their due right to information when they request for such, it will also discourage people from making such request in the first place given their negative perception of the courts who should be the final arbiter in the event of the request being turned down (Ajibade, 2017).

Poor Culture of Investigative Journalism

Utilisation of the FOI Act thrives more within the culture of investigative journalism. Journalists who request for information that is not ordinarily in the public domain typically do

that as a matter of an investigation process. Consequently, there is what could be termed a fundamental relationship between investigative journalism and Freedom of Information law (Fasugba, 2009; Uzoma and Onwukwe, 2012; Abone and Kur, 2014).

However, in Nigeria, the culture of investigative journalism is for some reasons weak. This state of affairs has been admitted even by a former number one journalist in the country - Mohammed Garba, ex-President of the Nigeria Union of journalists (NUJ) when he laments that painstaking investigative journalism has been replaced in the country with armchair reliance on press releases and news briefings, a practice which he notes does not synchronise with the media's watchdog role in society (Garba, 2013).

It has been noted in this regard that poor culture of investigative journalism in Nigeria would negatively affect utilisation of the Freedom of Information (FOI) Act among media practitioners in the country. Uzoma and Onwukwe (2012) in this vein observe that without a constant practice of investigative journalism, practitioners would hardly have any serious need for this sort of information that is kept away from the public view and which the journalist should make a request for its release. The implication will be that the FOI Act will seem useless to the practitioner, meaning that the goals of the Act are not being realised.

FOI Act in Nigeria: Prospects for the Future

Having examined the factors that appear to hamper full realization of the envisaged goals of the Freedom of Information (FOI) Act in Nigeria, we now turn to the future prospects. In effect, will briefly examine measures that could be taken towards a better realization of the intended benefits of the Act. These measures are as follows:

i. Legal Reforms: Some aspects of the FOI Act especially those provisions that “contain nebulous and slimy concepts that are open to differing interpretations” should be reviewed (Abone & Kur, 2014, p.33). Abone and Kur further reason that such review should also make provision for a supervisory body to oversee the implementation of the Act. Similarly, all laws that tend to unnecessarily negate the optimum functioning of the FOI Act should be amended accordingly or abrogated entirely if need be (Apuke, 2017).

ii. Political Commitment: Commitment on the part of the leaders to strict implementation of the provisions of the FOI Act will go a long way in ensuring realization of its goals (Apuke, 2017). “The attitude of public administrators is critical to the successful implementation of the Act because public administrators, who are the face of government, will determine the quality of, and access to requested information” (Ajibade, 2017, p.9). Omotayo (2015) expresses this sentiment more elaborately:

There is the need to ensure a fundamental change in the mindsets of politicians, bureaucrats and the public servants who are the custodian of government information, as well as building public awareness among the public servants to encourage active exercise of the right to know. The public sector needs to reorient public officers to appreciate the new regime of according information its pride of place as a developmental tool, and facilitate the administrative machinery to bridge the gulf between policy formulation and implementation (p.11)

iii. Judicial Reform: Ajibade (2017) rightly observes that “The effectiveness of the FIA also depends largely on a vibrant and active judiciary, being the final body that has the responsibility

of determining what kind of information should be made available to the public” (p.8). Hence, there is no gainsaying the fact that judicial reform will be a critical step towards realising the goals of the FOI Act. Such reforms should be geared towards improving accountability in the judiciary and making the judicial process efficient and fast (Omotayo, 2015; Apuke, 2017).

iv. More Vibrant Use

Lastly, while the FOI Act and its implementation process might be fraught with shortcomings, this does not in any way excuse the current seeming underutilisation of the legislation (Omotayo, 2015). Laws become strongly entrenched when it is constantly utilised and this utilisation (implementation) is a collective responsibility and not an exclusive task of the government as observed by Ajibade (2017):

...the success of implementation of the FIA is the co-responsibility of both the government (“supply side”) and the governed (“demand-side”). The demand-side which includes the citizens, civil societies and community organisations, media and the private sector must take responsibility for using the law as well as monitoring government efforts (p.9).

In regard to the media in particular, Dunu and Ugbo (2014) charge practitioners on their responsibility to show more commitment to the FOI Act. In their strong-worded submission, they admonish:

...we argue that, for the FOI Act to meet the high expectations and achieve the objectives of ensuring a more open and transparent society as well as enthrone democracy and responsible governance in Nigeria, the media must move beyond the euphoria that accompanied the establishment of the FOI Law, to come to terms with the provisions of the Act and begin to harness some of the expectations therein through the appropriate utilization of the Act (p.2)

Conclusion

The place of the FOI law in the efficient functioning of the media and deepening of democracy in Nigeria cannot be overemphasised. In this regard, Ajibade (2017) argues as follows:

Freedom of information in itself is a sine qua non for the fulfillment of all other rights and also important as a vital tool for democracy to thrive. Information held by public authorities is not acquired for the benefit of officials or politicians but for the public as a whole (p.9)

Consequently, the finding in this discourse that journalists in Nigeria are yet to optimally utilize this Act is quite regrettable. Viewed within the context of the Diffusion of Innovation Theory, it will be admitted that the journalists are still on the fringes of the innovation represented by the FOI Act; they are yet to adequately adopt this innovation. Stated differently, this innovation is yet to diffuse among them.

The implication of this shortcoming is far-reaching for press freedom in the country given that right to access to information is a critical component of freedom of the press (Akinwale, 2010; Idowu, 2011; Garba, 2013; Dogo, 2014; Nsereka and Ammanah, 2014; Omotayo, 2015).

Hence, the situation calls for some concerted intervention by all relevant stakeholders – the government, the press and civil society.

Based on our discussions we recommended the following:

- i. The government should show more commitment towards the implementation of the Freedom of Information Act. Such commitment will encourage citizens including journalists to explore the provisions of the Act in having access to public information. This way, a firm culture of freedom of the press would be enthroned and which in turn would serve the nation's democratisation process and development aspirations in general.
- ii. All existing laws, such as the Official Secrets Act, the Penal Code, the Criminal Code, etc. that hampers the effective administration of the FoI law should be repealed or amended to avoid conflicts with the FoI law. Even though Sections 27 and 28 of the FoI Act 2011 also overrides the provisions of the Criminal Code, the Penal Code, the Official Secrets Acts or any other such enactment with respect to disclosure of any record, ideally, the laws ought to be repealed because they are antithetical to FOI (Ajibade, 2017).
- iii. There is need for proper sensitisation of journalists and indeed the entire citizenry on the import, significance and *modus operandi* of the Freedom of Information Act as this would stimulate vibrant implementation of same.
- iv. Journalistic ethics should be promoted among journalists through sensitisation, training and re-training, and of course, self-imposed sanctions. This is to help checkmate some possible abuses which the Freedom of Information Act could bring about among them.
- v. Empirical studies should be conducted on the Freedom of Information Act with the view of assessing its operation so far; strengths and loopholes. This will be the first crucial step towards addressing the possible shortcomings.

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