

APPRAISING THE FREEDOM OF INFORMATION ACT 2011:HIGHLIGHTS AND CRITICISMS*

Abstract

Democracy is holding sway in every part of the globe and the duty of every government is to provide essential services to the people, this is not unconnected with the fact that the State is a social contract between the people and the government as such a relationship exist between the duo in a mutually beneficial way. While rendering services to the people, the people reserve the right to know or access certain basic information that relates to how the government is being run. This is the genesis of freedom of information which has become an inherent right of an individual and recognized as a constitutional right. In Nigeria the Freedom of Information Act passed into law in 2011 heralded a new dawn in the press freedom since other laws in existence before it have stifled and gagged the public from accessing public information. Most prominent among such laws is the Official Secret Act of 1962. However, one mind boggling question is that with several exceptional clauses in the Freedom of Information Act (FOI) 2011, how has it enhance the freedom refused by the old existing legal regime? Is it not just a case of what one hand gives the other takes? This article will critically examine the Constitution of the Federal Republic of Nigeria as amended, the freedom of Information Act 2011 and other extant laws that exist side by side with the FOI Act to ascertain whether or not there is indeed a freedom of information. The Article is divided into four parts. The introductory part which is a voyage of discovery into the new and existing legal framework on the freedom of information, the second part is an overview giving a limelight of the FOI Act, the third part is an examination of the legal framework, the fourth part is on the journey so far undertaken in the implementation of the FOI Act in Nigeria the last one is a conclusion and recommendation. The research adopts Doctrinal methodology using Primary and Secondary sources for analysis.

Keywords: Information, Secrecy, Press, Freedom, Access, Restricted

1. Introduction

It is said that in every society, freedom of the press is essential to transparency, accountability, good governance and the rule of law. Once it is suppressed there would be dire consequences for social cohesion and stability and where it is sacrificed for whatever reason conflicts are bound to take a center stage¹. Since the official enactment of the Official Secret Act (O.S.A) on 13th September 1962, the right to access to unauthorized transmission, obtaining, reproduction, or retention of any classified matter from public institutions was forbidden. Information could be termed ‘classified’ ‘confidential’ ‘restricted’ ‘not to be disclosed’ ‘official secret’, and so on and denied citizens arbitrarily without having recourse to their right to know what they need to know in public institution as citizens. This found its way into the Criminal Code,² the penal code, public complaint commission Act etc and over time the culture of secrecy permeated into the Public service Rules and Regulations among others. As time passes, the citizens, the media, civil society were becoming agitated over their rights to access official information as contained under section 39(1) of the Constitution³ and the government had to take measures to entrench such right. This is not unconnected with the fact that transparency and accountability is the hallmark of any democratic government. Information is a key step towards entrenching an open government in which Nigerians can have an active voice in the process of governance and policy decisions and such way is by passing a law that will supersede the O.S.A and properly regulate the right to access information without unnecessary hindrance or bottlenecks. Such will streamline government processes, improve bureaucratic efficiency, reduce corruption and support economic growth and foreign investments. After about 17 years of conception, the Freedom of Information Act 2011 popularly referred to as FOIA, was passed by both chambers of the 6th National Assembly i.e. the senate and the House of representatives on 24th day of May 2011 and assented to by the then President Good luck Ebele Jonathan on 28th day of May, 2011. FOIA was designed to ensure quality of access to and participation in government. The main objective of the Act is to ensure that every person who desires to know how government operates can do so with minimum effort and diligence.⁴

2. Overview of the Freedom of Information Act 2011

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¹ Kofi Anan, former secretary-General of the United Nations on the occasion of the World Press Freedom Day, May 3, 2000

² Criminal Code s. 97

³ Constitution of Federal Republic of Nigeria 1999 (as amended).

⁴ P. Yusuf, ‘Freedom of Information Act, what it means to you’ (2018) 3, 4th edition *The Communicator, NCC Quarterly issue* <https://www.ncc.gov.ng/the-freedom-of-information-act-2011-17> Accessed on 30/09/19.

Freedom of information, also known as access to information is the ability of a citizen to gain access to information that is held by the state. It is the ability of citizens of a country to have free, direct and unhindered access to information enabled by legislation.⁵ Freedom of information is an important element of the international guarantee of freedom of expression which includes the right to seek and receive, as well as to impart information and ideas.⁶ The right to information is constitutionally guaranteed as enshrined under Section 39 (1) of the 1999 Constitution of the Federal Republic of Nigeria as amended which 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. As a complimentary to the above provision, the constitution equally provides under the fundamental objectives and directive principles of the state policy that the press which consists of electronics, print and other agencies of the mass media shall at all times be free to uphold fundamental objectives contained in chapter II of the constitution and in doing so it shall uphold the responsibility and accountability of the government to the people. It is to serve as a watchdog for the public in checking the activities of government and upholding and ensuring transparency and accountability of government to the people.⁷ Similarly, Article 19 of the Universal Declarations of Human Rights provides to the effect that everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.⁸ Additionally, Article 9 of the African Charter on Human and Peoples Rights provides that every individual shall have the right to receive information every individual shall have the right to express opinions within the Law.⁹ The African Commission on Human and Peoples Rights adopted a Declaration of Principles on Freedom of Expression in Africa, stating: 'Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.'¹⁰

It follows from the above therefore that the declaration acknowledges the right of everyone to access information held by public institutions only subject to *clearly defined rules established by law*. This reinforces the necessity for the adoption of Freedom of information laws which contain such clearly defined rules. While this right is a component of the broader freedom of expression as guaranteed in the constitution and the international instruments, it is not simply the converse of the former, but a separate freedom of its own. An individual is only able to enjoy the right to information when they are free to access relevant information. As such access to information is the practical implementation of the right to information.¹¹ The freedom of information Act is an Act of the National Assembly that regulates citizens' access to information in the domain of public institution. The public institution is the conduit pipe of government through which essential services are provided to the people, it includes the public/civil service and its Ministries, agencies, parastatals, department and other public institutions established by Government. The FOIA was enacted with the sole objective to make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and; for related matters.¹² Inability of the people to have access to accurate and reliable information on matters of public interest results to people relying on rumours and unconfirmed reports with the obvious danger this presents for accurate and objective reporting by the media. And when citizens are denied access to salient or important information that directly affects their daily lives, they will always, employ rumor to create their own information. Such information may be totally wrong or minimally true, but in either case, they always have precarious effects on social structures and the lives of all people. Hate speeches, Riots, demonstrations, terrorism and killings have often arisen when official sources of information are controlled or undisclosed.¹³

⁵F.O. Omotayo, 'The Nigeria Freedom of Information Law: Progress, Implementation Challenges and Prospects' (2014) 1219 *library Philosophy and Practice (e-journal)* <<http://digitalcommons.unl.edu/libphilprac/1219>> accessed August 30 2019

⁶ N. O. Obiaraeri 'Access to Public Information in Nigeria- Celebrating with Caution' (2011)4 *CJJIL* 2

⁷Constitution of Federal Republic of Nigeria 1999(as amended) s.22

⁸ The Universal Declaration of Human Rights (UDHR),1948; Article 19. See also The International Covenant on Civil and Political Rights (ICCPR), 1966- guarantees the right to freedom of opinion and expression on very similar terms with UDHR

⁹ The African Charter on Human and Peoples Rights, (1981) a.9

¹⁰ Adopted at the 32nd Ordinary Session of the African Commission on Human and Peoples' Rights (Banjul, The Gambia, 2002)

¹¹Madubuike-Ekwe & Mbadugha 'Obstacles to the Implementation of the Freedom of Information Act, 2011 in Nigeria'(2018) 9*NAUJILJ* 2.

¹² Freedom of Information Act 2011(long title)

¹³ F.O Omotayo, *Supra*, note 5 .

3. Examination of the Legal Frameworks

In the pre and postcolonial independence era in Nigeria, several laws/decrees and edicts had been enacted and/or promulgated which either limits the operations and freedom of the press or seems to liberate this fourth estate of the realm. Some of these laws include but are not limited to the Official Secret Act of 1962, Public Officers (Protection Against false Accusation) Decree No 11 of 1976; Newspaper (Prohibition of Circulation, Validation) Decree No 12 of 1978, Public Officers (Protection Against False Accusation) Decree 4 of 1984, the Newspaper Act of 1917, the Press Registration Act of 1933, Obscene Publication Act of 1961; the Defamatory and Offensive Publication Decree No 44 of 1966, Nigerian Press Council Decree No 13 of 1978, State Security (Detention of Persons) Decree No 2 & 4 of 1984, Newspaper Registration Decree No 43 of 1993; Offensive Publications (Proscription) Decree No 35 of 1993; Section 22 and 39 of the constitution of the Federal Republic of Nigeria, 1999 and the Freedom of Information Act, 2011¹⁴As earlier stated, the foundation of the legal framework for the FOIA is the Constitution of the Federal Republic of Nigeria 1999 as amended. The Constitution as the *grundnorm* gives life to the FOIA. In particular, section 39(1) of the constitution is the pinnacle provisions for freedom of the press in Nigeria.

The Official Secret Act of 1962 regulates the publication of highly sensitive and confidential information or document that may weaken or undermine the integrity of the government and by extension threaten the security of the state¹⁵. Its major objective is to ensure national security and to prevent the custodians of official secret or official documents such as policy decisions, contracts and actions of government from delivering them to the public unfettered.¹⁶The Official Secret Act has been massively criticized for gagging and restricting right to access official information. It was observed thus;

This (Official Secret Act) is a very dangerous and uncharted sea for journalists in this and other countries of the world. Under this law, all government employees, including members of the civil servants take an oath, promising not to divulge 'Official Secrets'. This is an Act of all embracing scope and technically under it, a minor civil servant could be prosecuted for telling his wife what type of biscuit was provided in their office for lunch.¹⁷

The rationale and very essence of the Act is to:¹⁸

- a. Restrain garrulous and mischievous public servants from leaking government's confidential information.
- b. To check the excesses of over-zealous journalists who may, out of desperation, publish top government secret information that may threaten the stability of the state.
- c. To safeguard the security of the state by checking access to and publication of secret information likely to cause pandemonium, chaos, anarchy and mass action against government.

The arrival of the FOIA was greeted with a huge sigh of relief as it provides for unfettered access to public information and makes it easy to access such information. It had been openly eulogized by many Nigerians (including writers and journalists alike) as providing the Nigerian press/media with all the needed safeguards, guarantees and protections to carry out their sacred duties unfettered, unrestricted and without interference. The Act affords everyone regardless of tribe, age, creed, a right of access to information or records held by public institutions and relevant private entities, irrespective of the form in which such information or records are kept. Everybody is entitled 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.¹⁹• This right is statutorily guaranteed, notwithstanding anything contained in any other Act, Law or Regulation. The Act makes it mandatory for all government institutions to proactively publish specific categories of information about the institution through various means, including print, electronic and online source, and at the offices of the public institutions²⁰One of the outstanding features of the Act is that it provides that nobody needs to demonstrate or explain any specific interest or reason in the information or record being requested²¹. Request for information or records are to be processed within seven (7) days. This is seven days in total and not seven working days. There are also three additional days given in which to transfer requests to

¹⁴ES Asemah, *Selected Mass Media Themes* (Jos: University Press 2011) P.9

¹⁵LC Nwodu, *Journalism Practice: News, Aesthetics, Ethics and Laws* (Enugu: RhyceKernex Publishers 2006).

¹⁶BN Ewelukwa, *Introduction to Nigerian Press Law*. (Onitsha: Maranatha press 2004)

¹⁷G Ezeukwu & F Nwanze, *Mass Media Law Ethics*. (Enugu: Felocks Communications 1998). P21

¹⁸Nwodu, *Research in Communication and other Behavioural Sciences, Principles, Methods and Issues*.(Enugu: Rhyce Kerex Publishers 2006). P 19

¹⁹ FOIA s.1(1)

²⁰ FOIA s.2

²¹*Senator Abraham Adesanya v.The President of the Federal Republic of Nigeria & anor.*(1981) ANLR 1; *Thomas & Ors. v. Olufosoye*(2004) 49 WRN 35; *Gani Fawehinmi v. Akilu & Anor*(1987) 1 NWLR (pt. 67), . 797.

another agency if necessary. If the information is large, the law allows an extension of a further seven days. If the request is to be denied, then written notice must be given stating reasons why access was denied.²²This provision is unique because it gives the applicant the opportunity to get such information without delay and it prevents the public official from delay. Time is therefore considered to be of essence.

The Act penalizes the wrongful denial of information, destruction, falsification or alteration of information or records, or any attempt to do any of these things. It sets precautions against the destruction and falsification of records and documents. Destruction of records is a felony under the Act punishable with a minimum penalty of 1 year imprisonment for the officer or head of the institution. There is also a fine of N500,000 (five hundred thousand naira) payable for wrongfully denying access.²³This is to prevent the deliberate efforts by record keepers to falsify, destroy or mutilate documents for whatever reason. The Act places responsibility on public institutions to ensure that they keep records and information about their activities, operations and businesses. It also requires them to maintain properly organized information and records to facilitate easy access to such information. It is the responsibility of each organization to properly organize and maintain all information in its custody in a manner that facilitates public access to such information.²⁴The Act encourages public institutions and government agencies to be proactive about publishing information. Public organisations need to set up an information management system that facilitates easy retrieval of information for timely disposal of requests for information, and would allow for compliance with the requirement of proactive disclosure through electronic and online means. The ideal situation would be a virtual library but effort can be made to properly manage and catalogue records in a paper based library.

The Act also makes it mandatory that public institutions must train public officers on the provisions of the Act and the proper implementations of the Act²⁵. All public institutions need to designate and train an officer or officers to whom an application for information under the Act shall be sent as well as having a FoI department in the institution. The title and address of the officer(s) should be proactively disclosed to facilitate the process of application for access. In an effort to encourage proactive disclosure; the law affords protection to whistleblowers. Any public officials who blow the whistle of failure of public duty, abuse of power and mismanagement of funds etc are entitled to be protected against legal proceedings and from reprisals provide immunity for public officers against any form of civil or criminal proceedings for disclosure in good faith of any information pursuant to the FOIA.²⁶The Act allows everyone the right to initiate proceedings in court to compel any public institution to comply with the provisions of the Act²⁷. It also provides a thirty day window within which anyone who has been denied access by any public institution can bring the matter to court for a judicial review²⁸. The National Human Rights Commission would also, under the laws applicable to it, have a role in ensuring proper implementation of the rights contained in the FOI Act.

Furthermore, no civil or criminal proceedings will be taken against any person receiving the information or further disclosing it.²⁹ No person receiving information is to be compelled to disclose the source of his information or his informant. Accordingly the Court held, *inter alia*, in *Oyegbemi and Others v. Attorney-General of the Federation*³⁰ that:

No person, be he an editor, reporter or publisher can be compelled to disclose his source of information for any matter published by that person and non-disclosure cannot be contempt of court. This is subject to interest of justice, national security, public safety, order, morality, welfare of persons or prevention of disorder or crime. Consequently, the right to withhold information is like all other freedoms, not absolute.

The Act provides a range of eight (8) issue based exemptions to the public's right to know or access information. However, these eight exemptions are subject to a three part test which is:

²³FOIA s.10. The section equally penalizes any head of public institution who destroys or attempt to doctor any public record under his custody.

²⁴FOIA s.9.

²⁵ FOIA s.13

²⁶ Section 27 supra note 25

²⁷ Section 25 supra note 25

²⁸ Section 20 supra note 25

²⁹ Section 27(3) supra note 25

³⁰(1982) 3 NCLR 695; See also *Momoh v. Senate* (1981) 1 NCLR 105, (1983) 4 NCLR 296.

1. The issue must relate to one of the eight exemptions listed in the Act.
2. The harm that the disclosure of the said record or information would cause to the specific exemption must be clearly shown.
3. Justification must be provided to show that the harm which the disclosure of the said information or record would cause to the specific exemption clearly outweighs the disclosure.
4. public interest in the information or record being publicly made available.

The Act states that the following categories of information are exempted from disclosure:³¹

- I. Information that could damage conduct of international affairs and defence of Nigeria.
- II. Information on administrative law enforcement proceedings and investigation
- III. Personal information
- IV. Third party information such as trade secrets or financial information
- V. Legal practitioner and health worker privileges.

The Act places ultimate responsibility and obligation for implementation of its provisions on the office of the Attorney General of the Federation (AGF). By February 1 each year all public institutions must submit to the AGF an annual report on how they have complied with the provisions of the Act.³² The report must include the number of determinations made and reasons given by the institution for denial of information where applicable, the number of appeals made by applicants, the decisions of the court, the fees collected for processing applications and the number of staff devoted to processing applications for information.

However, it is not yet the required freedom for information seekers considering the extant provisions of the existing legal framework. The Freedom of Information Act, 2011 appears not be the messiah it is being referred to in some quarters regarding the freedom of the press to have free and unrestricted access to public records and information. This is because the Act obviously took away with the left hand from journalists that which it has given them with the right hand.³³ Going by the combined provisions of section 22 and 39(1) of the 1999 constitution of the Federal Republic of Nigeria as well as the Freedom of Information Act in 2011. They have not provided the much needed tonic and freedom for the press in Nigeria to operate. The reasons cannot be far-fetched as there are plethora of gagging, limiting and exclusionary sections and clauses which have provided ‘spirit sagging’ bureaucracy and bottlenecks to the freedoms of the Nigerian press to operate. For example, notwithstanding the express provisions of section 22 and 39(1) of the 1999 constitution of the Federal Republic of Nigeria (supra), section 39(3) of the same constitution expressly prohibits and prevents people from disclosing certain pieces of information at their disposal. The section reads:

Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:

- (a) For the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematography films; or
- (b) Imposing restrictions upon persons holding office under the government of the federation or of a state, members of the armed forces of the federation or members of the Nigeria Police Force or other Government security services or agencies established by law

The purport of the above provisions of the 1999 constitution is that a person who is in custody of certain pieces of information which the press considers to be of interest to the public, can hide under this law and refuse to grant same to the press. Moreover, such journalist and/or media man cannot legally and freely invoke the provisions of section 1 of the freedom of information Act which guarantees right to freedom to seek for and have access to information. The reason is simple: the Freedom of Information Act, no matter its superficial trappings and attractions, is still very much subject to the 1999 constitution (as amended). In fact, section 1(3) of the 1999 constitution overtly expresses its supremacy to any other law as made in Nigeria when it states: ‘If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail and that other law shall to the extent of the inconsistency be void’.³⁴ Consequently, the sections and subsections of the Freedom of Information Act which deny the press

³¹FOIA s.11-17.

³² FOIA S.29(1)

³³FM Oduah, ‘Emerging issues on freedom of information Act’ (2011)..1, *JHST*.3.

³⁴*Tony Momoh v Senate of the Federal Republic of Nigeria* (1981) 1 NCRL, 105 HC; (1983) 4 NCLR 269 CA. See also *Oyegbemi v AG Federation & Ors* (1982) 3 NCLR 895

freedom to have full access to information include sections 5(b), 8(1), 12, 15, 16, 17, 18 and 20 of the Act.³⁵ All these sections expressly state that a journalist or any information seeker may be denied access to such information he/she wants. Even though section 26(1)(i)(ii)(iii) of the Act empowers the court to, *suo motu*, if approached by an applicant, order a public institution to disclose information as sought by an applicant if the information is in the interest of the public, this situation is rather a ‘punishing’ and disheartening one for information seekers including journalists as this legal exercise will be largely time and money consuming³⁶.

Moreover, section 45(1) of the 1999 constitution (*supra*) appears to have put the final nail on the coffin of whatever is left of the freedom of the press in section 39(1). The section states:

Nothing in sections 37, 38, 39, 40 and 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society.

- (a) In the interest of defence, public safety, public order, public morality or public health; or
- (b) For the purpose of protecting the rights and freedom of other persons.

The purport of the above section 45 of the 1999 constitution is that the Nigerian press is still at the mercy, dictates and vagaries of the government of the day as any dictator can wake up overnight from his slumber and choose to gag the press by coming up with a draconian law/policy and action against the press in the guise that such annihilating action/law of theirs is in the interest of defence, public safety or public order. Another, important issue to consider is the existence of similar laws with the Freedom of information Act. These other laws are still operational in Nigeria. We have the Official Secrets Act, Evidence Act, the Public Complaints Commission Act, the Statistics Act and the Criminal Code etc all aimed at suppressing the free flow of information. All these laws affect the effectiveness of the Act in the long run as some mischievous public officers can use these aspects of the Acts for their selfish purposes just like what happened in the United Kingdom Parliament in 2009. Members of the UK Parliament (MPs) had misused the permitted allowances and also claimed some unlawful expenses; members now bank on Freedom of Information Legislation to prevent disclosure of the atrocity. Though the Freedom of Information Legislation was eventually negated (because of some sections in their Freedom of Information status that nullified the freedom of Information Legislation) and the issue subsequently published by The Telegraph Group in 2009, it would have been a different thing if it was in Nigeria. The freedom of information Act 2011 may supersede or overrides other existing legislations by virtue of sections 27 and 28 of the FOI Act with respect to disclosure of any information the laws have not been repealed or amended by the Legislature. Until they are repealed or amended, these laws will continue to adversely affect the effective implementation of the FOI Act.³⁷

4. The Journey of Implementation of the Freedom of Information Act 2011 in Nigeria

It is worthy of note that since the passage of the FOIA in 2011, it has spurred some administrative and jurisprudential development in our legal system even though the phenomena in Nigeria is one thing to have the law in existence and another thing to comply or bring it into effect. Some success stories attributable to the passage of the law have been recorded. There is a remarkable rise in the number of persons and organizations requesting 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. Recently, the Code of Conduct Bureau refused public access to details of assets declared by Governors or other public office holders on the ground that the Code of Conduct Act did not mandate them to make their declarations public³⁸. There have also been delays in granting requests.³⁹ However, most of the cases for the demand and access to information, accountability and good governance in Nigeria have been instituted by civil society organizations. In *General India Garba v. Commissioner of Finance Benue State*⁴⁰, the High Court of Benue State held that the FOI Act applies to all states of the Federation including Benue State. The Court overruled the objection raised by the Counsel to the Defendant that the FOI Act 2011 was not applicable to Benue state because Benue State had not enacted a law domesticating the Act in the State.

³⁵FM Oduah, ‘Freedom of Information Act, Official Secret Act and the Press freedom in 21st century Nigeria; How free is the Press? (2015) 1CPAGP 1

³⁶C Nwabueze, *Introduction to Mass Communication, Media Ecology in the Global Village* (Owerri: Topshelve publishers 2014) p. 243.

³⁷Madubuike –Ekwe&Mbadugha *Supra* note 6.

³⁸M Ubani, ‘Is Freedom of Information Act Working?’, *The Nation*, November 19, 2013, P.32, <http://thenationonlineng.net/freedom-information-act-working> retrieved on 2nd September 2019.

³⁹F.O Omotayo, *Supra* note 6

⁴⁰(Unreported Suit No. MAC/2564/M/2012)

In *Public & Private Development Center Ltd. /GTE (PPDC) v. Federal Ministry of Finance*,⁴¹ the Applicant applied for access to a loan agreement executed between the Federal Republic of Nigeria and the Chinese Exim Bank on the execution and completion of the Abuja light rail Project in the custody of the Federal government. The Federal government denied the request on the grounds that the documents contain the trade secrets of the Chinese Exim Bank which ought not to be disclosed. After perusing the documents, the Court held that the respondents had no justification in denying the Applicants the documents sought under the FOI Act. In *Uzoegwu F.O.C. v Central Bank of Nigeria*⁴² the Federal High Court ordered the Central Bank of Nigeria to allow the applicant access the emoluments of its senior staff. The Court overrule the objection of the CBN that request such as these would be exempted under the personal information provision of the FOI Act. In *Boniface Okezie v. Central Bank of Nigeria*⁴³, on August 2009, the Federal High Court in Lagos recently had opportunity to interpret Central bank of Nigeria while exercising its powers under the Central bank of Nigeria Act, 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 Economic and Financial Crimes Commission 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 considerations for the rights of the affected banks' shareholders. In 2012, the Progressive Shareholders Association of Nigeria, represented by its president Boniface Okezie, wrote to the Central bank requesting information relating to the recovery of Oceanic International Bank Plc's assets. The letter requested, *inter alia*, the following information:

the cost so far to the Central Bank, the government and the Nigerian people of the banking reforms instituted by the Central bank, and particularly the amount of legal fees and other fees paid and to be paid to professionals and professional bodies; how much of the amount mentioned above represented fees and to be paid to OlaniwunAjayi LP and Kola Awodein & Co....

The Central Bank refused to disclose the requested information by the Association. As a result, the Association instituted a suit against the CBN under the Freedom of Information Act. The Association also requested the Court to compel the CBN to publish its handling of approximately N191 billion worth of assets forfeited by Ibru. In a landmark ruling on the application of the Freedom of Information Act, the Court held that the Central Bank of Nigeria, as a public institution, has a duty under the Act to provide details of such information, and that the banks' refusal to disclose the information on request by the Association was unlawful. Justice Mohamed Idris, ordered the Bank to comply with the Association's request by releasing the information sought. The Judge observed that: 'The Act is intended to promote transparency and prevent corruption; therefore all public institutions must ensure that they comply with the FOI Act in the interest of transparency, justice and development.'⁴⁴ However the Judge refused to compel the CBN to release information relating to the fees and commissions paid to the Law firms representing it on grounds that such information enjoyed Attorney-Client privilege and was protected by section 16 of the FOI Act, 2011.⁴⁵

Similarly, in a recent ruling, the Federal High Court, Abuja, presided over by Justice Gabriel Kolawole suggested that the Freedom of Information Act 2011, was somehow defective because it provides in Section 1(2) that an applicant seeking information from a public institution should not be required to demonstrate his or her interest in that information and called on the National Assembly to amend the Law to restrict its application.⁴⁶ In *Paradigm Initiative Nigeria v. Dr. Reuben Abati*,⁴⁷ the Learned judge declared that there is no 'country in the world where access to all forms of public records are thrown open to an applicant who is not required to show any specific interest in the information requested from a public body.' He further called on the National Assembly to 'review the Act so as to ensure that access to information is only made available to such applicants who genuinely need it for specific purpose(s).'⁴⁸

⁴¹(Unreported Suit No. FHC/ABJ/CS/856/13); See also (*PPDC v. National Agency for Food & Drug Administration and Control, NAFDAC* Unreported Suit No. FHC/ABJ/CS/760/13)

⁴²(Unreported suit No. FHC/ABJ/CS/1016/2011)

⁴³(Unreported suit No. FHC/L/CS/494/2012)

⁴⁴M. Ozekhome, 'The Freedom of Information Act: The Journey So Far' A paper delivered at the Faculty of Law, Benson Idahosa University, Benin on 30th April, 2014. p.4

⁴⁵Madubuike –Ekwe & Mbadugha. Supra note 37.

⁴⁶EdetaenOjo, 'FOI Act: Where his Lordship got it Wrong,' Vanguard Newspapers August 6, 2013, P.32

⁴⁷(Unreported suit No.FHC/ABJ/CS/402/2013)

⁴⁸ Ibid.

Another milestone achieved in the practical application of FOI in Nigeria recently was In April 2019, SERAP obtained an *ex parte* order In the suit number FHC/L/CS/105/19 before a Federal High Court in Lagos compelling the Minister of Power, Works and Housing, BabatundeFashola, to disclose the names of corrupt contractors and to provide specific details on the names and whereabouts of the contractors who collected public funds meant for electricity projects but disappeared with the money without executing any projects, starting from the return of democracy in 1999 to 2018.⁴⁹ In a similar development, on the 12th of April 2019, SERAP sent FOI information request to President Muhammadu Buhari and the 36 State Governors in Nigeria requesting them to use their good offices and leadership positions to provide information on specific details of spending of appropriated public funds as security votes between 2011 and 2019. Given the current security realities in the country, they require the information to determine if public funds meant to provide security and ensure respect and protection of the rights to life, physical integrity, and liberty of Nigerians have been spent for this purpose. This request is limited to details of visible, specific security measure and projects carried out excluding spending on intelligence operations.⁵⁰

5. Conclusion and Recommendations

The right to access information and means of accessing it through the freedom of information Act is quite a welcome development, as marvelous as the provisions seem, it is beset by many inhibitive provisions constitutionally and statutorily. This will have a far reaching implication on the application even though it is already manifesting. The provision for judicial review could be said to be the most amazing provision in FOIA however, court must be a last resort and not to be resorted to at every violation of the Act or refusal to grant access to information by a public office holder. It is therefore recommended as follows;

- I. It is apposite for the National Assembly to revisit the constitutional provisions in respect of freedom of information as well as the FOI Act 2011 and to amend the provisions that in reality restrict unrestricted access to information.
- II. It is also my conviction that the interpretation Act should interpret The word ‘public interest’ as used in the 1999 Constitution, Freedom of Information Act, and other enabling statutes. This is to avoid ambiguity and multifaceted interpretations given by person to suit their selfish interest in a given circumstance.
- III. That request for information must be genuine. Persons must show interest as to reasons why they require such information. This is to prevent mischief makers from laying their hands on public information.
- IV. Although there is another commendable provision under the FOI Act on the need for accelerated hearing during the judicial review but there is need to provide for time within which the court may have to hear and determine such matter. This will, save the journalists and other information seekers the pains of having to waste many years in court just to obtain an order of court for an access to information, after all is widely said that justice delayed, is justice denied.

⁴⁹Udora Orizu, ‘Court Grants SERAP Permission to Compel Fashola to Name Corrupt Contractors’ Thisday Newspaper April 1, 2019, p 19.

⁵⁰ Press release, ‘SERAP writes Buhari, 36 governors, seeks disclosure of spending on ‘security votes’ Premium Times, April 14,2019, p. 32.