

## **THE EFFECT OF THE FREEDOM OF INFORMATION ACT ON THE FIGHT AGAINST CORRUPTION IN NIGERIA**

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### **Abstract**

The Freedom of Information Act (FOIA)<sup>1</sup> was enacted to ensure transparency and accountability in government. The Act does this by making provisions for citizens to have the warrant to request information from public officials. This paper finds that the effective enforcement of the FOIA will give room for government officials to be more accountable to the members of the public. It recognizes that while there are other means to hold public officials accountable to the people, the FIOA seems like the easiest to utilize. The paper further identifies the challenges that may be associated with the Freedom of Information Act such as the Nigerian culture of secrecy, bureaucracy and lack of adequate record keeping among others. The authors suggest that the FOIA can have a positive impact on the fight against corruption in Nigeria if certain amendments are made to the Act and if the provisions of the Act are enforced strictly. This paper recommends that there should be more awareness for the FOIA among members of the public and not just journalists or civil societies. Further to this, the FOIA should be amended to give room for administrative sanctions to be meted out on officials who fail to comply with the provisions of the Act and also to allow extension of time for reply to request for information by an individual where the circumstance warrants it.

**Keywords:** Accountability, Corruption, Freedom of Information Act, Transparency

### **Introduction**

The advent of information technology in Nigeria has added a brighter coloration to the struggle to arrest corruption particularly in the public sector as it has almost become an integral part of the system. The virus of corruption has so much mixed with Nigeria's economy that it has become almost impossible to identify the host from the parasite. This is so as, particularly in the public sector, where the host appears not to see or deliberately ignores the harms that come with the intimacy it shares with the dreaded virus. It is therefore only a man armed with the right information that can decipher and expose the effects of corruption in Nigeria as a country. Availability and free flow of information play a major role in demanding for transparency and accountability from the governing class whose activities and schedule are usually not available for public scrutiny.

Section 39 of the Constitution<sup>2</sup> makes provision for the right to freedom of expression. This Section copiously provides that everyone shall be free to express themselves, form and hold opinions, discuss opinions, accept or reject opinions and impart ideas amongst each other.<sup>3</sup> The ability of Nigerian citizens to freely discuss, accept or criticise modus operandi of governance is derived from this right. Also, the liberty to seek access to information, however it is kept also stems from this undeniable right. Therefore, an individual who discusses politics constructively is exercising his or her right to express himself or herself freely as provided in the constitution.<sup>4</sup> To

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<sup>1</sup> The Freedom of Information Act 2011.

<sup>2</sup> Constitution of the Federal Republic of Nigeria 1999 (The Constitution).

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

further ensure access to information for critical analysis of governance and for the people to have and make an informed opinion, the Freedom of Information Act (FOIA) was enacted by National Assembly in 2011. This law was enacted to ensure transparency and accountability in governance, by permitting the grant of access to information held by officials occupying public offices and to guarantee press freedom.

In order to do justice to the work, the paper discusses the history of the FOIA, reviews the FOIA extensively, explores the effectiveness of this law in achieving the aim of its enactment and suggests possible amendments to be made to the Act to ensure that it is actively utilized by the people for the purpose of its enactment.

It has been argued that the FOIA appears to only exist in theory and has not gainfully impacted free access to information. As a result, this paper seeks to answer the following questions: is the FOIA a law sufficient enough to curb corrupt practices among public officials in Nigeria? Are there unnecessary or inadequate provisions in the Act? Are there challenges to the adequate enforcement of the FOIA? Can the identified challenges to the enforcement of the provisions of the Act be addressed through the amendment of the Act? This paper is divided into three sections. The first part will discuss the conceptual framework of the key words. The second part will contain the history and review of the FOIA. Lastly, the third section will discuss the impact of the FOIA on the fight against corruption in Nigeria and provide necessary recommendations to help boost the impact of the FOIA on the fight against corruption. This paper will undertake a doctrinal approach to give a proper analysis of the topic.

## **Conceptual Clarification**

### **Corruption**

Corruption is synonymous with all forms of indiscipline and abuse of status and positions.<sup>5</sup> The Black's Law Dictionary defines corruption as "The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the right of others."<sup>6</sup> This definition is detailed and captures the possibility of public officials to use their office to amass wealth or other benefits for themselves fraudulently, immorally or illegally.<sup>7</sup> Going by this definition anyone who partakes in such is engaging in corruption. However, this may or not be punishable depending on the state of the law of the affected society.<sup>8</sup> Furthermore, corruption has been defined as a form of "dishonest or illegal behaviour especially by powerful people (such as government officials or police officers)."<sup>9</sup> This definition suggests that in most instances, for a person to be corrupt he/she must be in a position that puts him or her in charge of others and such a person is expected to be accountable to those people.<sup>10</sup> Corruption in Nigeria has become so rampant that it is becoming difficult to make a sentence about Nigeria and not include corruption. It has become a major ache of the Nigerian society and this is why almost every politician vying for a political post in Nigeria uses fight

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<sup>5</sup> Yeaoboa-Assiamah E, 'Corruption Here, Corruption there, Corruption Everywhere, a Framework for Understanding and Addressing Public Sector Corruption in Developing African Countries' [2014] 4(3) Journal of Public Administration and Governance.

<sup>6</sup> Brian A. Garner (ed), Black's Law dictionary 11<sup>th</sup> edition (St Paul MN Thomson Reuters 2014).

<sup>7</sup> Olukanyinsola Ajayi & Simisola Osasanmi, 'Nigeria on the Frail of Spectre- Destabilization of Development and Transitional Economies' [1998] 1(4)Journal of Money Laundering Control.

<sup>8</sup> *Ibid.*

<sup>9</sup> Merriam Webster Dictionary, 'Corruption' <<https://www.merriam-webster.com/dictionary/corruption>> accessed 9 July 2023.

<sup>10</sup> Ajayi and Osasanmi, (n7).

against corruption as a major campaign strategy.<sup>11</sup> The need to fight corruption has become necessary and several measures are being put in place to curb this societal menace by every government, yet, it keeps spreading as if no measure is being put in place to curtail it. It is now a case of the more intervention made, the more the spread of its virus as philosophically opined by Aristotle many centuries ago.<sup>12</sup>

### **The Freedom of Information**

Freedom of Information is the right of the members of the public in any society to freely access and give information ordinarily held by government officials and state institutions.<sup>13</sup> Free flow of information is one of the rights enjoyed by every citizen of Nigeria and it has both constitutional and international coloration and protection.<sup>14</sup> It is considered a fundamental right of a special class. This is because it enjoys not only local or regional recognitions, but it is also recognised under customary international Law as well.<sup>15</sup> The citizens of all states and members of the public in general have the constitutional right to enjoy this right.<sup>16</sup> This will ensure transparency, probity and accountability in both the public and private sectors of the economy.

The country stands to benefit from its enforcement immensely,<sup>17</sup> particularly in the age and time when the war against corruption is almost lost.<sup>18</sup> The freedom of information is an extension of the right to freedom of expression as contained in Universal Declaration of Human Rights and the Constitution of the Federal Republic of Nigeria. This is because freedom of expression also includes the freedom to seek, receive and impart information and ideas through any media, regardless of frontiers and personality involved.<sup>19</sup>

### **Theoretical Framework**

For an effective discussion of the work, three essential theories have been carefully selected to create the foundational bases for the research work. These theories are; the Civil Society Theory, Libertarian Theory and the Deterrence Theory of Punishment.

The Civil Society Theory is one of the most relevant and instructive theories when examining the contributions of civil society organisations to the evolution and development of a society. Little wonder in 1993, three groups: Media Rights Agenda, Civil Liberties Organization and the Nigerian Union of Journalists campaigned openly and vigorously for the enactment of FOI law that will ensure freedom of the press and unhindered access to information.<sup>20</sup> One of the major proponents

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<sup>11</sup> Yemi Akinseye- George and Victor O. Ayeni, 'Independence of Anti-Corruption Bodies in Nigeria: Myth or Reality?' in Yusuf Ali (ed), *Anatomy of Corruption in Nigeria*, (Intec Printers Ltd, 2016) 237.

<sup>12</sup> Aristotle, "the more you know, the more you don't know" available at <<https://www.quora.com/Aristotle-said-the-more-you-know-the-more-you-dont-know-do-you-agree>> accessed 8 August 2023.

<sup>13</sup> Lexology, 'An Overview of the Freedom of Information Act (An appraisal from a Lawyer's Perspective)' (19 August 2016) <[https://www.lexology.com/library/detail.aspx?g=2f3432be-c8ff-4ff1-b396-3cd25682\\_fdee](https://www.lexology.com/library/detail.aspx?g=2f3432be-c8ff-4ff1-b396-3cd25682_fdee)> accessed 9 August 2023.

<sup>14</sup> CFRN 1999 s39(1).

<sup>15</sup> Universal Declaration of Human Right 1948 217 (III) A Article 19.

<sup>16</sup> Ojo, O. 'Combating Corruption through the FOI Act'. (Paper presented at a Media/Civil Society Roundtable on Nigeria's anti-corruption situation held at Lagos 2015).

<sup>17</sup> Ifeoma Oluwasemilore, 'A Critical Analysis of Nigeria's Freedom of Information Act' [2018] 9 (2) *The Gravitas Review of Business and Property Law*, 11.

<sup>18</sup> Oludayo Tade, 'Why Buhari's Government is losing the Anti-Corruption War' *The Conversation*, (Lagos, 7 March 2021) Available at <[https://theconversation.com/cdn.ampproject.org/v/s/theconversation.com/amp/why-buhari-government-is-losing-the-anti-corruption-war-155488?amp\\_gsa](https://theconversation.com/cdn.ampproject.org/v/s/theconversation.com/amp/why-buhari-government-is-losing-the-anti-corruption-war-155488?amp_gsa)> accessed 2 May 2023.

<sup>19</sup> *Ibid.*

<sup>20</sup> Omotayo F O, 'The Nigerian Freedom of Information Law: Progress, Implementation, Challenges and Prospects' [2015] *Library Philosophy and Practice* (e journal), 1219.

of the theory is John Keane.<sup>21</sup> He opined that various civil society groups should exist in a community to ensure effective participation in governance.<sup>22</sup> He was of the opinion that the people through the various civil societies which will be autonomous and independent, can ensure transparency and accountability in governance and as a result prevent corrupt practices among public officials. Going by the proposal of this theory, the various civil societies in Nigeria will be able to improve people's participation in governance through the utilisation of the FOIA. They can furnish Nigerians with information gotten and help them have more informed political opinion.

It has been established that the civil societies identified in the theory above will require information for them to act effectively. They can apply for any information they need directly or act on the information released by pressmen through the news media. For pressmen to release adequate information they have to be able to gain access to this information and their publications should not be restricted. It is to this end that the John Locke and John Stuart Mill's Libertarian theory of the press becomes relevant to this paper. Some of the basic propositions of this theory are that:

1. publications should not be censored.
2. the protection for publication of facts should be extended to journalist who has published an error unknowingly.
3. attacks on government or government officials should not be treated like attacks on individuals and should not be punishable.
4. journalist should not encounter any legal restriction when collecting information for publication.

The deterrence theory of punishment is one of the most persuasive tactics to normative ethics in the historical evolution of philosophy. The proponents which includes Jeremy Bentham (1748-1832) proposes that morally justifiable action is the very one that generated the most good and that the fear of punishment will go a long way to curb commission of crime.<sup>23</sup> That is, people would scarcely commit crime because they do not want to be punished. They believe that the gravity of the punishment determines how scared people are of committing the crime.<sup>24</sup> To agree with this statement is to assume that people think before they commit a crime, that people look at the law before deciding whether to commit the crime or not. While this may be so for some people, there are also people who commit crime because it is incidental to their unlawful goals and whether or not there is punishment for their actions, they will still go ahead with the crime to achieve the goals. It is difficult to assume that the FOIA which barely has adequate and realistic punishment for defaulters would prevent the commission of offences. It is questionable whether the fact that someone can seek access to ones' records would stop a person from committing a crime. Also, putting into consideration the fact that such official can always find a reason to hide the information being sought, one cannot be certain that the FOIA can do a lot in the fight against corruption in Nigeria.

### **The Nigerian Freedom of Information Act 2011**

The Freedom of Information Act was enacted by the National Assembly in 2011. It is the principal law on transmission of information within public institutions in Nigeria. The Act which has 32 sections, was enacted to protect and control access to public records and to ensure the protection of personal privacy. Furthermore, the Act seeks to guide public officers on disclosure of

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<sup>21</sup> Christinna Puga, 'Civil Society Theory: Keane' <[https://link.springer.com/referenceworkentry/10.1007/978-0-387-93996-4\\_521](https://link.springer.com/referenceworkentry/10.1007/978-0-387-93996-4_521)> accessed 9 July 2023.

<sup>22</sup> Keane John, *Civil Society and the state: New European Perspectives* (London University of Westminster Press 1998).

<sup>23</sup> *Ibid.*

<sup>24</sup> Hsin-wen Lee 'Taking Deterrence Seriously: The Wide-Scope Deterrence Theory of Punishment' [2017] 36(1) *Criminal Justice Ethics*, 2.

information and proffers necessary guidelines and protection for public officers regarding disclosure of official information at his disposal.

#### *History of the Nigerian Freedom of Information Act*

Traditionally, Nigerians irrespective of tribe have not been raised to appreciate openness or question their leaders about their leadership style. In the Yoruba land, the title of the King is 'Kabiesi' meaning 'unquestionable'.<sup>25</sup> In a typical Yoruba parlance, it was indeed a taboo and a serious aberration to question the decision of the king and sometimes these decisions were made with the help of the chiefs who carried out public administration on behalf of the king. It meant that the people could not question those holding public offices.<sup>26</sup> Often times, Public Officers in the traditional system in the bid to avoid public outcry, assumed that the best thing to do was to manage the information at the disposal of the members of the community. In like manner, in the Hausa land, the commands of the Emir were final and anyone who dared to question them was considered a rude subject. It is even worst when it has to do with religious issues<sup>27</sup>

Considering this traditional background of Nigerians that the British colonial masters met, seeking press freedom during the colonial era did not sit well with the colonial masters. The British colonial government found the tone and content of Nigerian newspapers uncomfortable; they perceived them as criticism and anti-government publications and discussions.<sup>28</sup> As a result, they promulgated the Obnoxious Newspaper Ordinance of 1903 and Seditious Offences Ordinance of 1909<sup>29</sup> to curtail the free flow and dissemination of information by way of publication. At independence, the Nigerian Independence Constitution made provision for freedom of expression, the press still did not have access to information under the control of public servants. Journalists could not fight for long for the enactment of a law ensuring press freedom and free access to information due to the military takeover of government in 1966. The military rule continued till 1993.

In 1993, three groups: Media Rights Agenda, Civil Liberties Organization and the Nigerian Union of Journalists campaigned openly for the enactment of FOI law.<sup>30</sup> The Media Rights Agenda came up with a draft bill in 1994 and named it Draft Access to Public Records and Official Information Act. This draft was later revised to FOI bill. The bill remained unaccented to until 2011 when President Goodluck Jonathan gave presidential ascent to the bill and it became the FOI Act 2011. This Act has been the law governing public access to information in Nigeria till date. It was developed and recommended to the National Assembly by the coalition of over 180 Civil Society Organizations. To strengthen the right of the citizens and improve access to information held by the public officers and to aid the fight against corruption in the public sector that has become

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<sup>25</sup> PH Oladumiye, Adiji Bolajoko and Esther Bolajoko. 'Monarchical Activities of the Yoruba kings of South Western Nigeria: A Culturer Heritage in Printmaking Visual Documentary' [2014] 3 (9) Journal of Arts and Humanities, 1.

<sup>26</sup> *Ibid.*

<sup>27</sup> John Campbell, 'Traditional Rulers Hold Power in Nigeria' *Council on Foreign Relations* (London, 18 April 2018) available at < <https://www.cfr.org/blog/traditional-rulers-hold-real-power-nigeria>> accessed 2 August 2023.

<sup>28</sup> Jacob U Agba, Eric Ugor Ogri and Kwita Ojong Adomi, 'The Nigerian Freedom of Information (FOI) Act and the Right to Know: Bridging the Gapp between Principle and Practice' [2018] 73 *New Media and Mass Communication*, 2.

<sup>29</sup> Ayuba A Aminu, Yahaya Y Malgwi, Bulama Kagu and Ibrahim Danjuma, 'The Nigeria Freedom of Information Act 2011 and It's Implication For Records and Office Security Management' [2011] 79 available at <<https://www.semanticscholar.org/paper/Nigeria-Freedom-of-Information-Act-2011-and-it%27s-AminuMalgwi/8c8e764f6d7c47a9b435c1b829a98ab1dbed00c4>> accessed 8 July 2023.

<sup>30</sup> Omotayo (n19).

institutionalized.<sup>31</sup> It also aims at probity and to encourage transparent documentation of information and data management in the public sector so that the citizens know who to hold responsible for any unjustified blemish in the discharge and performance of his public duties and responsibilities.<sup>32</sup>

#### *Review of the Freedom of Information Act*

Section 1 of FOIA provides that anyone has a right to access any information that is in possession of a public official and such person does not need to demonstrate any special interest in the information sought for. Such person who has the right to an information can apply for it and if denied access, he also by virtue of the Act has the right to institute a court proceeding to compel such public institution or official to make the information available for his use. This opening section of the Act is very relevant and it appears to be the most important section of the Act put together. It is consistent with the provision of the Constitution of Nigeria which provides for freedom of expression. This section of the Act will help Nigerians to be informed and have access to information that will encourage transparency in governance with a polity? that is well informed politically. One likely challenge with the full implementation of this section is that the culture of secrecy has been embedded in the Nigeria public service and among the citizens of Nigeria.<sup>33</sup> Even if records are adequately kept, the citizens may never care to apply because the whole idea of public scrutiny is alien to our public service and the people.<sup>34</sup>

The Act in Section 2 mandates all public institutions to keep and record all information regarding its activities, operations and business and also ensure proper organisation and keeping of information in their custody. It is believed that this provision will encourage public institutions to take record keeping and proper documentation and filling seriously. Furthermore, Section 2 (3) provides that public institutions should publish the records kept in line with subsection 1 and makes them readily available to the public. Some of this information include: list of employees, description and responsibilities of the institution, expenditure of the institution's funds amongst others.

To avoid a reproduction of old information just to meet with the provisions of the Act, and to ensure constant update as at when necessary, sub-section 5 of the same section provides that the information should be reviewed periodically and as soon as a change is made to it. While this section is relevant and cardinal, the adequacy of its provisions can be questioned as there are no administrative sanctions for individuals who fail to comply with this section.<sup>35</sup> Also, there is a conservative system of storing public records by most institutions in Nigeria. Most records are kept in hardcopies which make them difficult to access especially when they are old documents. It may take the individual in charge hours or days to obtain some documents and make them available. If the guidelines<sup>36</sup> can make provision for public officers to not only keep records but to ensure that the documents are kept in electronic copies, it will become easier for members of the public to access information as at when needed as time is equivalent to money in some instances.

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<sup>31</sup> Ifeoma Oluwasemilore, (n9).

<sup>32</sup> Omotayo (n19).

<sup>33</sup> Ezegwu Damiel T, Nwokeocha Ifeanyi M and Ejem Agwu A, 'Freedom of Information Act in Nigeria: Exploring the Gulf Between Enactment and Operability' [2013] 4 (2) *International Journal of Social Science and Humanities* p 119.

<sup>34</sup> Kikelomo Lamidi, 'Background of the Freedom of Information Request in Nigeria' *The Human Rights Law Service* (14 April 2019) <<https://hurilaws.org/background-of-the-freedom-of-information-request-in-nigeria/>> accessed 29 July 2023.

<sup>35</sup> Omotayo (n20).

<sup>36</sup> Ngozi J Udombana, 'Addressing the Implementation Challenges of Institutional Obligations and Reporting Requirement Under the Nigerian Freedom of Information Act 2011' [2019] 10 (5) *Beijing Law Review*.

Section 3 of the FOIA recognises a different class of public records. This class is the one that may not be available in print but can only be printed in public offices. Upon application by anyone for this class of information, the Act mandates that it should be printed and made available to the applicant. This provision is an attempt by the Act to recognise information that has been gotten through electronic submission. This is a very good provision that gives room for technological development as electronic registrations are becoming more popular these days. The Act in 3(2) recognises the possible challenge that may be faced by illiterates and disabled persons and provides that they can make applications through a third party (a third party can help them make application). The applicant can make oral application. However, this oral application should be put into writing by the official the application was made to.

Subject to the provision of sections 6, 7 and 8, the public institution should make the requested information available to the applicant within Seven (7) days of receiving the application. If the institution thinks that the application should be denied, it shall notify the applicant of its decisions and reason for the decisions. That the Act makes provision for a timeframe is commendable and a welcome development in legislative drafts of this class. This will help to curb the usual administrative delays that Nigerians experience when dealing with public institutions. Although, it is questionable whether in reality, officials in public institutions work with this timeframe as it seems unrealistic considering the bureaucracy involved in relating with public offices in Nigeria.<sup>37</sup>

One of the questions that may come up from this provision is whether seven (7) days as provided for under the sections 6, 7 and 8 of the Act is a reasonable timeline to search for a document, read a document and even have an opinion or make a decision to release a document that has been applied for? The answer to this question is subject to the circumstance of each case. In some instances, the document being requested for may have a large volume. In another way, the person to whom the request has been made may be new in office and as such may not be the author of the document or familiar with the work in the document and may not have seen the document before; therefore, he may require more time to read the document and form an opinion on whether to release the document or not. The person may even need approval from a higher authority to access or release the information.<sup>38</sup>

The FOIA provides that an official can refuse an application but must give a reason for the decision. This can be likened in some circumstances to a statement of defence<sup>39</sup> which one needs ample time to prepare. The National Industrial Court has the shortest time frame within which a statement of defence must be filed and that is fourteen (14) days. For some courts parties even have up to 42 days<sup>40</sup> to file a statement of defence. So, in the case of a reply to an application brought under the FOIA, there should be a more detailed provision accommodating these exceptional circumstances as mentioned here.

Furthermore, this provision of approaching court in case of refusal seems to have altered the impression of journalists and other people who request for document or information under the Act. Since the law says seven days, they cannot imagine going to court to get an order after their request has been refused. Hence, once they are denied access to the requested information, they tend to forget about the document rather than explore other options and ensure that they have exhausted

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<sup>37</sup> *Ibid.*

<sup>38</sup> Philip Teniola David, Sanyaolu Oluwaseyi and Emmanuel O Sijuade, '10 Years of Freedom of Information Act in Nigeria: The Journey so Far, Prospects and Challenges Among Media Practitioners' [2021] 9(8) International Journal of Social Relevance and Concern 156.

<sup>39</sup> Especially since this reply may be subject to the court's scrutiny if application is made to the court after refusal.

<sup>40</sup> See High Court of Lagos State (Civil Procedure) Rules 2019 Order 17 Rule 1.

all possible means to access the information. The Act was passed to encourage transparency, if this is the goal, no time should be too long to wait for the information by the end users.

Section 5 of the Act makes provision for transfer of application to access information from one public institution to another one which it considers has greater interest in the area of request. Greater interest being that the information was originally produced in or for the institution or the information was first received by the institution. This provision is brilliant but will only be effective if the various officers of the public institutions work together and are properly sensitised on this.

Section 7 of the Act provides that the applicant who applies for the release of a document or information can challenge the refusal of access to information and the court can review the application. Where the applicant establishes a case of wrongful denial, the defaulting officer or institution has committed an offence or institution has committed an offence and upon conviction will be liable to a fine of five hundred thousand naira (N500,000). Section 20 provides that this should be done within 30 days of receipt of notice of refusal. Section 21 provides that such matter shall be heard and determined summarily. Section 25 provides that if the court finds that the denial of access was inappropriate, it can order that the information should be disclosed by the public institution. This section leaves a huge decision of appropriateness or not of releasing information to the discretion of the Court. Even if the institution has a valid reason for refusing to grant access to an information, the court can decide that it should be released. Furthermore, the people may refuse to approach the court after a refusal because of the problems associated with litigation in Nigeria such as undue delay, high cost of litigation<sup>41</sup> and uncertainty of their decisions, not leaving out conflicting orders and judgments. These problems have made people weary of litigation. Media organisations that are already dealing with shortage of funds to even carry out their day-to-day functions may find litigation too expensive and then refuse to approach the court after a refusal.<sup>42</sup> Of equal importance is the Section 10 of the Act which makes it an offence to wilfully destroy, attempt to doctor or alter public records. Anyone found guilty of any of these will be liable to a year imprisonment. This section should also provide administrative sanctions for officials found guilty of the condemned act.

The Act from sections 11 to 19 provides instances and circumstances where information sought via this Act may be refused or denied no matter how important it is by the party seeking the information. Section 11 of the Act provides that a public institution may deny access to information if it finds that disclosure of the information may be injurious to international affair and defence of the Federal Republic of Nigeria. Moreover, access to such information will be denied if the interest of the public in disclosing the information outweighs the possible injury the disclosure may cause. Section 12 makes provision for public institutions to deny an application for information that the institution has gathered for administrative proceedings or for law enforcement purposes if access to such information would interfere with enforcement or deprive a person of fair hearing.

Section 14 provides that public institutions must deny access to information that contain people's personal information. However, if public interest in disclosure of the information outweighs the privacy of the individual being protected, access can be granted to the information. Section 15 forbids an institution from granting access to information relating to a trade secret. The only exception to this prohibition being if the disclosure would be in public interest, relates to public health, public safety or environmental protection. Section 16 recognises denial of access to

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<sup>41</sup> Babafemi Odunsi, Medical Negligence and kits Litigation in Nigeria' Beijing Law Review, Vol 14 No 2 june 2023.

<sup>42</sup> Agba and others (n18) 25.

information that is subject to legal practitioner-client privilege, health worker-patient privilege, journalism confidentiality privilege and other relevant professional privileges. The sections reviewed in this paragraph ensure that even though the Act was enacted to ensure freedom of information, the rights of individuals to privacy as provided in the Constitution<sup>43</sup> is not breached, professional confidence is not tampered with and information that may cause danger to the public is not released under the guise of the Act. Section 13 mandates every government or public institution to provide appropriate training for its officials on the right of the public, to public records. This section is very important and adequate measures should be taken by public offices to ensure that their officials undergo these trainings and also sensitise people around them on the provisions of the FOIA.<sup>44</sup>

Sections 17 and 19 of the Act are very relevant to the educational sector as these sections recognise the confidentiality that academic research requires. Section 17 allows public institution to deny access to an information which contains course or research material prepared by faculty members. Furthermore, section 19 permits denial of access to information relating to test questions, scoring keys and other examination data used to administer or interview. Sections 22 to 25 of the Act makes provisions for guidelines be followed by the court when reviewing cases involving refused application. While the court must have access to all necessary information regarding the case, they must ensure that effort is made to keep the information from leakage. With these sections, the Act recognises the duty and powers of the judiciary and ensures that the Act does not prevent the judiciary from doing justice.

Through section 29, the Act makes it compulsory through its provisions for every public institution to submit a yearly report to the office of the Attorney General of the Federation on or before the first day of February every year. This report must detail the extent of the compliance to the Act by the public institution. The provision is enacted to ensure accountability by officers handling sensitive information and to serve as a check in case of abuse of their responsibility under the Act. However, due to the very high numbers of such institutions in Nigeria and higher numbers of officials that keeps information, it may be very difficult to monitor compliance, this is coupled with the retinue of constitutional, statutorily and administrative functions involving the office of the Attorney General of the Federation. The Office of Ombudsman should have been more preferable for this, but the Office exists more on statute than in reality in Nigeria.

Section 30 is the definition Section of this Act. Some of the salient definitions in the Act are the definitions of court, public institution and public record. Court in the Act refers to either the State High Court (SHC) or the Federal High Court (FHC). This means that both the SHC and the FHC have jurisdiction on matters arising from the Act. Public institution is any legislative, judicial or executive body of the government or private bodies which provide public services, performs public functions or utilises public funds. Public Records are electronic or paper documents under control of the public or private bodies which in themselves relate to public interest.

### **The Impact of the Freedom of Information Act on the Fight against Corruption**

Freedom of Information Act was enacted in Nigeria at a time it was most needed. Corruption has eaten deep into the fabrics of the nation's public service and of course, even private institutions. The endemic and suppressing nature of corruption in Nigeria has raised it to the status of a national problem which like scarcity of food requires state of emergency declaration as made by Bola

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<sup>43</sup> The Constitution (n2) Section 37.

<sup>44</sup> Ijeoma Okereke, 'How State Officials Violate Nigeria's Freedom of Information Act' *Premium Times* [Lagos, April 2020] <<https://www.premiumtimesng.com/news/headlines/386053-how-state-officials-violate-nigerias-freedom-of-information-act.html?tztc=1>> accessed 20 July 2023.

Tinubu the President of Federal Republic of Nigeria in year 2023.<sup>45</sup> In the fight against this monstrous misbehavior, there is every need for freedom of information to prevail. The anti-graft war can only succeed in an environment where public records are within the reach of members of the general public. FOIA is a step in the right direction in this regard. Its provisions have provided a good backup and reinforcement to the struggle to entrench the principles of responsibility, accountability, and transparency in public governance and administration. This paper argues that the Act has recorded relative popularity among members of the general public. However, how well it is being utilized to facilitate the anti-graft war is the next course for concern, as the paper recognises that it has not been effectively utilized due to several intervening variables.

Some of such are:

With both national and international agencies pointing continuously at corruption as the major obstacle to socio-economic development, there is a dire need to tame the monster now. This is where the Act becomes important, as it is one of the greatest assets in the hands of whistle blowers who have the zeal to expose corrupt acts. It now behooves on journalists and members of the civil society to key into the opportunities and avenues provided by the Act to root out corruption in the country. Until this is done, the FOIA remains an Act in the statutes book with little or no impact on the Nigerian society.

Increased citizens' demand for accountability will naturally instil fear in public office holders and therefore check their excesses. Nigerians must take advantage of the FOIA to commence the journey towards cleansing of the land. Corruption is pervasive in our society and exists at every level of the society. FOIA is one of the surest ways of holding public institutions accountable

Although, it has been argued that whether the FOIA is passed or not, corruption can still be tamed as investigative agencies have access to any record that they need for investigating allegations of corrupt practices by public officials.<sup>46</sup> However, the issue with this argument is that the expense of conducting such investigation outweighs the cost of applying through the FOIA. Also, Custodians of public documents are ordinarily meant to be accountable to the people. It becomes questionable whether the people should always go through investigative agencies to have access to information that should ordinarily be made available to them without asking. It is also not cost effective to always go through the investigative agencies to gain access to every public document where the members of the public suspects corrupt practices.

Worthy of note is the fact that public officials despite knowing that investigative agencies can have access to public records, still go ahead with these corrupt acts. The Auditor Generals of the States or Federation has power to call for any record whether because an audit has been commissioned or routinely and randomly yet white colour offences are still being committed. The question then is whether request from random people has the capacity to stop public officials from committing official offences? Although the people cannot by themselves hold the public officials accountable, information gotten through applications brought under the FOIA can be used to make report to relevant authorities that can hold public officials accountable. The people can also through public outcry gain enough attention from relevant authorities that will then make conscious effort to curb the corrupt acts that has led to the public outcry.

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<sup>45</sup> Mary Izuaka, 'Tinubu declares state of Emergency on food insecurity as prices rise' *Premium Times* (Lagos, 13 July 2023) <<https://www.premiumtimesng.com/agriculture/agric-news/609678-updatewd-tinubu-declares-state-of-emergency-on-food-insecurity-as-prices-rise>> accessed 10 August 2023.

<sup>46</sup> Udombana (n37).

The major challenge to the great impact that the FOIA would have had on the fight against corruption in Nigeria is that the FOIA makes it almost impossible to compel public officials to disclose any information. The exceptions are cumbersome and this makes it very easy for public officials to refuse to grant an application.<sup>47</sup> If there is an intent not to release the documents, there are enough justifications in the Act to this effect. One may conclude that it appears that the FOIA gave with one hand and took back with the other hand.

There is also the view that the FOIA should make provisions that will enable people to apply for information with private institutions. The assumed reason for this is that public institutions use private institutions to perpetuate corruption. While the assumption may be correct, asking that a law should force privately owned organisation or business entity to be accountable to people they do not owe any such duty will amount to an abuse of power. Private organisations and business entities are already under the control of Corporate Affairs Commission (CAC) and governed by the Companies and Allied Matters Act 2020 (CAMA) and they are expected to file returns at the Corporate Affairs Commission and also hold Annual General Meetings.<sup>48</sup> Any member of the public could approach the Commission for the available information kept with the Commission and make do with it. Therefore, it can be stated that Private institutions are already under enough scrutiny and should not have any business with the FOIA. The FOIA is a law responsible for transparency in governance.

Furthermore, it is not very plausible that the FOIA could be invoked against a State-owned business or agencies. This so as 'Information' is not stated in the Exclusive Legislative List as provided under the Constitution.<sup>49</sup> Little wonder the State Assemblies are encouraged to domesticate the law to allow it enforceability within individual State of the Federation. The FOIA would contribute immensely to the fight against corruption in Nigeria. As it is, if adequately implemented, it would, through ensuring transparency, guarantee accountability of government officials to the people and also help to further reduce corrupt practices in public institutions.

### **Conclusion**

The FOIA which was enacted in 2011 encourages transparency and accountability of public officials. Without mincing words, the act is embedded with practical provisions of law and adequate policies of governance. These would provide the public particularly NGOs and journalists with the much-needed tools, data and enabling environment to generate information for analyzing, accessing, appraising or scrutinising the account, record or activities of public officials. It will also help to educate and inform the public about the activities of the government or any of its sectors in a manner that will ensure accountability and transparency in governance. This will in no measure make the members of the public more equipped with veritable information about how they are being governed; thereby giving room for constructive criticism or condemnation of erring public officer with a view to expose his/her excesses. Furthermore, this will make them who? serve the public better and give room for increase in priceless service to humanity in the country.

There is no doubt that transparency is a great disincentive against corruption and other unethical practices. It is an effective and cost-efficient measure for the fight against corruption in Nigeria. A strengthened FOI regime will enhance citizens' demand for accountability and prevent and check the spread of corruption in Nigeria. Perhaps it may be the missing link that made corruption a

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<sup>47</sup> Preye Kuro Inokoba, 'Freedom of Information Act and Democratic Consolidation in Nigeria: Prospects and Challenges' [2014] 3 (12), 2260.

<sup>48</sup> Companies and Allied Matters Act 2020 s237.

<sup>49</sup> CFRN 1999 Part 1 Second Schedule.

veritable vocation in Nigeria. Therefore, the provisions of the FOIA should be strictly enforced for the law to achieve its full potential.

### **Recommendations**

1. Creation of more awareness for the Act:<sup>50</sup> Important journalism stakeholders such as tertiary institutions, the Nigerian Union of Journalists (NUJ), Newspaper Proprietors Association of Nigeria (NPAN) and Civil Society Organisations (CSO) should ensure there is more awareness for the FOIA and help the people have a good understanding of its provisions.<sup>51</sup> They should also have Legal practitioners take them through the legal aspects of the Act; this will help the people to use the Act more and impact our society.
2. There should be a monitoring team to ensure compliance with the Act:<sup>52</sup> the Ministry of Information develop a team whose role would be to receive reports on every application brought under the FOIA and ensure the application is treated properly (be it a decision to approve or a decision to refuse) and within time.
3. Electronic Copies of Documents should be kept: To foster adequate record-keeping, there should be a provision in the FOIA ensuring that public officials keep scanned copies of all documents. This will make it easier to produce these documents when there is request for them.
4. Impose Administrative sanctions:<sup>53</sup> While some acts under the FOIA have been made criminal and punishable by the courts, there are some acts that have not been prescribed as offences. Hence, people who perpetuate these acts would go unpunished. To ensure proper compliance with the provisions of the FOIA there should be administrative sanctions such as suspension without pay and termination of appointment for officials who fail to comply with the provisions of the Act.
5. Exceptions on number of days for application: As noted above, the days within which a reply must be provided to an application brought under the FOIA is seven days. This provision should come with some provisos that will accommodate some special circumstances<sup>54</sup> that make it humanly impossible to provide a reply within the stipulated time.
6. Government should put up policies that would help to build an informed, dynamic and patriotic civil service.

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<sup>50</sup> Inokoba (n48).

<sup>51</sup> Asogwa Fidelis Ndidiamaka, Ibe Nkechiyere Magdalene Awo and Orji-Egwu Agatha Obiageri, 'Freedom of Information Act and Journalism in Nigeria 2011-2021: A Review of a Decade of Utilisation and Practice' [2021] 6 *Melting Pot*, 45.

<sup>52</sup> Udombana (n37).

<sup>53</sup> Udombana (n37).

<sup>54</sup> If the official is new in office and is just accessing the document in question for the first time, if the official would need approval of someone in higher authority to access the information, if the official did not author the document and if the document is voluminous amongst others.