

FREEDOM OF INFORMATION ACT AND JOURNALISM IN NIGERIA 2011 - 2021: A REVIEW OF A DECADE OF UTILISATION AND PRACTICE

Asogwa Fidelis Ndidiamaka

Department of Mass Communication,
Akanu Ibiam Federal Polytechnic, Unwana
gykhusinta@gmail.com

Ibe Nkechinyere Magdalene Awo

Department of Mass Communication,
Akanu Ibiam Federal Polytechnic, Unwana, Ebonyi State
nkechinyeremagdalene@gmail.com

Orji-Egwu Agatha Obiageri, Ph.D

Department of Mass Communication,
Ebonyi State University, Abakaliki, Ebonyi State
orjiegwuagatha@gmail.com

Abstract

Freedom of Information (FOI) is one of the globally recognised instruments in democratic societies specifically designed to enhance journalism practice and enthrone an open society. Nigeria joined the rest of the world in 2011 to enact a freedom of information act. But the extent of the workability of this act, and its utilisation among journalists has not been fully explored or understood. What is the level of FOI knowledge among journalists; are journalists utilising this act in their work; and how is the practice environment for journalists? Bearing these

questions in mind, this study, using an exploratory methodology, reviewed the operation of Freedom of Information Act (FOIA) in Nigeria since 2011 and its utilisation by journalists. The result reveals that FOIA has low utilisation among journalists while the Act is yet to take firm roots in the cultural environment of journalism practice in the country. It also showed that the Act is hampered by existing legal and administrative barriers in the country while important stakeholders such as civil servants, and MDAs, have low levels of FOIA awareness. The study concludes that important as the FOI is, its impact is yet to be fully felt in journalism practice in Nigeria. The study recommends that important journalism stakeholders such as tertiary institutions, the Nigerian Union of Journalists (NUJ), employers, Newspaper Proprietors Association of Nigeria (NPAN), and Civil Society Organisations (CSO) etc., should increase their awareness creation on FOIA to make journalists use it more and impact our society better.

Keywords: FOIA, journalism, freedom, information, awareness, rights, Nigeria

Introduction

The quest for the creation of a media friendly environment in Nigeria where the practice of journalism is unfettered and rule of law is assured is like a holy grail, not just for journalists but also for civil society groups, Non-Governmental Organisations (NGOs), social and political activists, as well as the ordinary citizen. This quest achieved its greatest milestone with the passing of the Freedom of Information Act (FOIA) which was

signed into law by the former president, Dr. Goodluck Jonathan on May 27, 2011. The overwhelming belief among journalists, and concerned stakeholders was that the Freedom of Information Act in Nigeria will engender an egalitarian society where fairness, equity, freedom, transparency, and rule of law will reign. It was envisaged that FOIA will usher in a culture of high level of disclosure of government information, promote transparency in government business, create unhindered access to official information, protect whistle blowers, and make its provisions superior to existing laws that hindered the free flow of information (Obayi, Anorue, Onyebuchi, Umeokeke, & Etumnu, 2020; Inokuba, 2014; FOIA, 2011). Thus, Akor and Oko (2015), echoed the highlights of FOIA when they noted that the Act effectively changes access to government information from a 'need to know' to a 'right to know'. The Act was to be elevated to the status of a fundamental right and, therefore, justiciable. Ten years down the line, this hope of renaissance looks bleak, amidst apparent loss of enthusiasm in the media environment on the FOIA, and its ability to bring about an open and transparent change that our society desire where everyone could access any information that is legally permissible.

The FOI law was touted as an idea whose time had come. It is one of the defining laws that confer the status of democracy, openness, transparency, freedom, anti-corruption, and government accountability on countries that have them. Although this is a commendable development especially in Africa where autocratic and despotic governments are the norm, it has also been criticised as 'democratic window dressing'

(Lidberg, 2017), where the FOI law is enacted to achieve favourable political image rather than to truly enthrone an environment of freedom and government transparency.

According to the Director-general of UNESCO, Irina Bokova (2010) "while in 1990 there were 13 countries with national FOI laws, currently this legislation exists in more than 80, with another 20 to 30 countries actively considering its introduction". Not only is the number of countries with FOI laws increasing but the civil, and judicial advocacies surrounding FOI law is also increasing. Accordingly, "the number of national constitutions and high court rulings guaranteeing FOI has also grown. At the global and regional levels, an increasing body of declarations, treaties and jurisprudence has specially alluded to FOI as a fundamental corollary of freedom of expression".

According to Onwubere (2013), the long wait for the FOI Act, from the time the bill was proposed in 1999 to its actualisation as an Act on 24th May 2011 (12 years after) has been like a hope dashed. The expectations of succour from the Act was not, after all, achieved. Enoche (2012), has rightly pointed out that the media and other stakeholders must, therefore, go beyond the euphoria of FOIA and start harnessing its possibilities through appropriate utilisation.

What are the issues with the FOIA in Nigeria and how has journalism fared since the establishment of the Act? Have journalists utilised the opportunities presented by the Act to make journalism better? Have journalists in Nigeria tapped the FOIA to make their watch-dog role more efficient and

effective? Have they interrogated power more effectively as a result of the establishment of FOIA? These questions will be explored further in this study.

Objectives of the Study

1. To determine the level of awareness of the Freedom of Information Act among journalists in Nigeria.
2. To ascertain the application of FOI among journalists in Nigeria.
3. To determine the challenges of FOI in Nigeria.
4. To determine if journalists use other options rather than FOI to obtain official information.

Conceptual Clarification

Conceptually, Freedom of Information simply means unfettered access to information that is of interest to the public. Three international bodies, UNESCO, AU, and the Carter Centre, have tried to capture the concepts behind the FOI. At the 2011 World Press Freedom Day, the then Director-General of UNESCO, Irina Bokova, defined Freedom of Information as:

The principle that organisations have a duty to share or provide ready access to information they hold, to anyone who wants it, based on the public's right to be informed. The right to know is central for upholding other basic rights, for furthering transparency, justice and development. Hand in hand with the complementary notion of freedom of expression, it underpins democracy.

The establishment of FOI laws in Africa was accelerated after the African Union Declaration of Principles on Freedom of Expression. Part IV of the principle states that “public bodies hold information not for themselves but as custodians of the public good and everyone has the right to access the information”. In 2003, the AU further elaborated on Article 9 of its African Charter which entitles “everyone to access information held by public bodies”. It also entitles “everyone to access information held by private bodies which is necessary for the exercise or protection of any right”.

The Carter Centre has encapsulated the basic conceptual components of Freedom of Information – the right to seek information and ideas; the right to receive information and ideas; and the right to impart information and ideas.

Freedom of information thus means a free flow of information and ideas without undue interference from government and its agencies for “access to public records gives citizens the opportunity to participate in public life, helps set priorities, and hold their government accountable. A free flow of information can be an important tool for building trust between a government and its citizens” (Idumange, 2013).

Theoretical Framework

The Freedom of Information Act finds its most appropriate theoretical foundations in the libertarian theory of the press. The theory has its basis on the philosophical writings of John Locke, John Stuart Mill, and John Milton and has been recognized worldwide as an essential component of press

freedom in democratic societies. The basic ideas behind this theory are: (1) Publication should be free from censorship. (2). There should not be licensing for publication. (3). Publication of error has the same protection as the publication of facts. (4). There should be no legal restriction for collection of information. (5). Attacks on governments or government officials are distinct from personal attacks and should not be punishable. (6). Journalists should have autonomy from their organisations or employers. (7). There should not be any restriction on importation or exportation of news. See McQuail (1987). According to Asema, Nwammuo, and Nkwam-Uwaoma (2017, 46) as cited by Obayi, Anorue, Onyebuchi, Umeokeke, and Etumnu (2020, 116) the “fundamental assumption of the theory is that, people should have access through the media to all kinds of information and opinions from which they are expected to make the right decision by applying their rationality”. Amplifying further the assumptions of this theory, Abone and Kur (2014, 26), stated thus: the libertarian theory explains that the Freedom of Information Act is intended to guarantee freedom of expression, freedom of speech and freedom of the press. This is because the Act is aimed at making information freely accessible to whoever needs it”.

Review of Related Literature

Globally, scholars and media practitioners have been concerned with three principal areas of the nature of Freedom of Information Law - awareness of FOI, application of FOI, and the legal environment of FOI. Even among the pace-setters of FOI laws, such as Sweden (1766), Columbia (1888), and

United States (1946), these three areas have continued to generate the most concerns and discussions. African countries with FOI laws – South Africa (2000), Zimbabwe, Angola, Uganda (2004), and Nigeria (2011), have faced the same concerns.

Some empirical studies have found the promise of FOI to be at variance with its practical application. For example, Lindberg (2017), found the promise - practice gap of FOI in five countries to be markedly at variance - Sweden 63 - 47, Australia 12 - 13, USA 31 - 0, South Africa 31 - 0, and Thailand 31 - 0. Thus, even some established democracies have not always lived up to the expectations of FOI laws. Thus, Lindberg concluded that “passing FOI legislation is relatively easy; the hard part is making it work in practice. This requires sincere and real political will, not just during one political term but consistently over decades”. Also, Omotayo (2015), found that FOI is not in full operation in Nigeria as those who are supposed to make it work are rather non-challant about its provisions while Apuke (2017), stated that journalists felt the freedom to operate under the provisions of the law but actual practice is where the problem lies. Abone and Kur (2014), found high level of awareness of FOI among journalists but this has not translated to high level of awareness among the public. Their findings tally with that of Oluwatomi (2017), who also found low public awareness about FOI. But Idumange (2013), contrary to the findings of Abone and Kur, found “pervasive ignorance among journalists about FOIA”. He thus concluded that this ignorance is “likely to constitute an impediment to its

effective implementation as many of them appear to be unaware of its provisions and their duties and obligations under it”.

The *Nation Newspaper* editorial of June 7, 2021 lamented the findings of Media Rights Agenda (MRA) to the effect that even though FOI has been impactful, some statutory bodies especially the National Assembly and the office of the Attorney-General of the Federation “have not been proactive in ensuring compliance by public institutions as enjoined by the Act”. On April 5, 2020, *Premium Times Newspaper* published a report showing how state government officials are frustrating the operation of FOI and noted that 16 states (Imo, Anambra, Akwa-Ibom, Edo, Osun, Ogun, Plateau, Kogi, Nasarawa, Niger, Kano, Sokoto, Bauchi, Adamawa, Taraba, and Yobe) are yet to “domesticate it or create compliance mechanism that serve to promote transparency and accountability in government”. The report said states are hiding under conflicting judicial pronouncements on the applicability of FOI across the federation to make the law ineffective. A legal expert, Femi Falana, was quoted in the report thus:

There are two conflicting judgments of the Court of Appeal on the applicability of the Freedom of Information Act in the states. One says that it is applicable throughout the country. Another one says that it is not applicable to states on the grounds that it is a federal enactment. Apart from Ekiti State which has a Freedom of Information Law other state governments prefer to hide under the judgment of the Court of Appeal that says that the FOI Act is not applicable to the states.

The newspaper disclosed in the same report that in the past two years, its “UDEME project distributed over 600 FOIs to Federal Ministries, Departments and Agencies (MDAs). In this time, only 30 per cent of such requests were effectively treated and the information requested disclosed. The remaining were either ignored or acknowledged with no information provided”. In another study Nnadi and Obot (2014), found that only 22.3% of journalists surveyed have ever applied for information based on the provisions of FOIA. Even then, they found that 78.4% of these applications were turned down. They thus concluded: the long awaited law is going through a trial by those who were supposed to be the major beneficiaries. Journalists are either unaware of the provisions of the law or have not utilised or tested the specific provisions of the law in their news gathering/information sourcing". This conclusion is corroborated by Adeniji (2017), who also concluded that "after the passage of the FOIA and with the different case studies of the early deployments, it becomes apparent that journalists are not at the forefront of the application of the act. Instead, NGOs are at the centre-stage of the deployment of the act."

The Executive Director, Media Rights Agenda(MRA), one of the principal NGOs in the FOIA struggle, in a paper delivered at the World Press Freedom Day 2010 stated that there "appears to be a high level of dissatisfaction or even disappointment, with the state of implementation in those countries(in Africa) which already have FOI laws". Also, Onwubere (2013),arrived at the same conclusion when she said that “the long wait for the FOIA, from the time the bill was proposed in 1999 to its

actualisation has been like a hope dashed". Abone and Kur (2014), were not so pessimistic about the FOIA in Nigeria but they found that journalists' perceptions of the influence of FOIA on journalism practice in Nigeria were not optimistic based on the existence of such provisions in the act as national security, defiance of rule of law, official secrets act, and cost/time in obtaining official information.

Challenges of FOI in Nigeria

The Act as it is

According to Ogbuokiri (2011), FOIA is full of exemptions. Only sections 1 and 3 grant access to information but other sections, such as 7, 11, 12, 14, 15, 17, 18 and 26 deny this access to information. In other words, there are more exemptions in the act than access and this has frustrated journalists, NGOs and individuals from accessing information held by the government and its agencies. Section 29, which deals with national security is particularly difficult to navigate by journalists as public officials hide under this provision to deny the public right to be informed. The result is few recourse to the FOIA to get vital information for public consumption. It has been noted that it is easier for journalists to access official information through informal contacts than through the FOIA. Thus, the FOIA is made redundant by its own very provisions.

Denial of Access

This is a universal problem associated with the FOI law. In a study by Open Society Justice Initiative (OSJI), 47% of requests drew a "mute refusal". In another study by Lidberg, it

was found that the "most common response to FOI requests was no response. Yet most of these "mute refusal" or "silent refusal" were on issues which the FOI has expressly permitted access to but public officials, out of ignorance and desire for the old order, in their wisdom, deny the public access to the information. To make matters worse public officials are hardly sanctioned for needless denial of FOI requests.

Counter Legal Provisions

There are legal provisions in Nigeria which run contrary to the FOIA. According to Afolayan (2012, 10) these include the Official Secrets Act, Evidence Act, the Statistics Act, and the Public Complaints Act. These acts in Nigeria have one common feature: suppression of free flow of information. These acts directly work against the smooth operation of the FOIA and needlessly limit access to critical information that should be in the public domain.

Time and Cost

The time it takes to get access to official records is rather too long especially in the world of today where information moves at the speed of light. The FOIA has a response time limit of 90 days. This is not only archaic but emboldens public officials to use this latitude to frustrate FOI requests especially from journalists. Again, it is after this period that the journalist making the FOI request can approach the courts to enforce access. By this time, the information sought may have become time-barred. The cost implication in terms of enforcing compliance through the court may also be too prohibitive for

media organisations that are already battling with dwindling revenue.

Conclusion

The 2017 Associated Press report stated that more FOI requests were denied in 2017 than in previous years. This runs contrary to increased enlightenment by Civil Society Organisations, Non-Governmental Organisations, Freedom of Information advocacy groups, and court pronouncements giving FOI the status of fundamental human right. In Nigeria, several empirical studies, as already cited, show that FOI has not met expectations of stakeholders and the general public. The level of its awareness is still debatably low among journalists as well as the public. While the judiciary has been supportive of FOI, journalists and their media organisations have not shown enough interest, and commitment, to make FOI more effective as a legal instrument for journalism practice in Nigeria. It is safe to conclude that the three focal points of FOI effectiveness among journalists and the public - awareness, application, and legal environment - are lacking in Nigeria. The Director-general of UNESCO (2010) may well have been addressing the Nigerian situation when he said:

Despite significant progress and emergence of a world community of advocates for FOI, there are still many factors constraining advance toward fully achieving its promise to empower individuals and further accountability, transparency, and the fight against corruption.

Recommendations.

There should be an amendment to FOIA to make it more amenable to current realities especially as it concerns the existence of other legal provisions, exemptions, and time within which official FOI requests are communicated to requesters. This amendments should be spear-headed by Journalists and other interest groups through the national assembly. This is the time for more advocacy to compel the national assembly to tinker the FOIA to make it more useful to the country.

Government should train and re-train senior public officials who are the custodians of the information sought by the public to familiarise themselves with the provisions of the FOIA in order to respond appropriately to requests for information for public consumption. Part of the biggest problems of FOI laws worldwide is the knowledge gap of public officials about the provisions of FOI laws particularly with regards to what information should be in the public domain.

There should be administrative sanctions in addition to the statutory legal sanctions for public officials who needlessly deny access to public information which fall under the ambit of the FOIA. This will prevent them from taking laws into their hands by summarily dismissing FOI requests, wasting time to frustrate FOI requests, or hiding under the national security or official secrets clauses needlessly all in an attempt to withhold information from the public.

Journalists should make FOIA part of their tools of trade in order to utilise its provisions in their day to day news gathering and dissemination of information. A situation where a sizeable population of journalists is ignorant of the provisions of the FOIA calls for concern. This knowledge gap creates a psychological complex where the journalist is easily intimidated by public officials since the journalist is not sure of where he stands legally with regards to the FOIA.

Employers and trade groups in the media industry such as the Newspaper Proprietors Association of Nigeria (NPAN), and the Nigerian Union of Journalists (NUJ), should incorporate FOI awareness and application as part of their periodic training for journalists in order to make FOI a more effective tool of trade.

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