



FREEDOM OF INFORMATION ACT: ISSUES AND CHALLENGES IN NIGERIAN JOURNALISM PRACTICE

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ABSTRACT

In order to facilitate easy access to information and create an open society, the concept of freedom of information (FOI) is widely accepted, particularly in democratic societies. Nigeria adopted the Freedom of Information Act (FOIA) in 2011 to make information easily accessible, as obtainable in other climes. This study examines the concept of information freedom and the issues and challenges associated with FOIA. It also examines the nature of Nigerian journalism practice. Some of the challenges mentioned in this paper include information access denial, legal loopholes, and public servants needing to be aware of the Freedom of Information Act. The paper finds that the current Freedom of Information Act 2011 offers no relief. The Act does not provide the media with any additional protection; rather it merely imposed duties and obligations on the media without explicitly granting rights or privileges beyond the general right to free expression enjoined by all citizens.

Keywords: FOIA, journalism practice, challenges, legal provisions, press freedom

Introduction

Concerns about journalists' inability to effectively use the *Freedom of Information Act* (FOIA) eleven years later have been expressed by stakeholders in the media. It was intended to give journalists access to public records and information as long as it was in the public interest when it was enacted and signed into law on May 28, 2011, by the Goodluck Jonathan administration. The *Freedom of Information Act* made it possible for Nigerian citizens and journalists to participate in governance.

That is to say, everyone has the right to access public information in order to confirm information and offer pertinent suggestions for the greater good, not just journalists. Also, knowledgeable citizens can fight against corruption and careless governance as well as confront the few who misuse resources for their own benefit (International Law Office, 2013)

The ability of a nation's citizens to have largely unrestricted access to information made possible by legislation, according to Omotayo (2015), is referred to as freedom of information. According to professional standards, journalists should be able to conduct investigations and gather facts and opinions.

This freedom includes communicating ideas and information through any medium without worrying about retaliation. Again, Omotayo (2015) notes that since 1859, when modern journalism first appeared in Nigeria, it has struggled to obtain the necessary freedom to carry out its societal responsibilities honourably.

Journalists had to pursue information to produce thorough, factual, and impartial reporting, putting themselves in a dangerous situation that could result in them being attacked, tortured, or even killed. Malayo (2012), Obayi, Anorue, Onyebuchi, Umeokeke & Etumnu (2020) assert that Nigerian journalists have long agitated for establishing a society in which they are free to practise their profession without interference from governmental laws or policies as evidence supporting this claim.

A high degree of press freedom is ensured by law, which is of utmost importance. Some provisions of the *1911 Official Secrets Act* were nullified by the FOIA, particularly *Section 28 (1)*, which forbade the transfer, acquisition, reproduction, or retention of classified information without authorization. For instance, the *Act's Section 30(3)* applies to public and private organizations that deliver public services, perform public duties, or utilise public resources.

Although the FOIA exists, Madubiike and Mbadugha (2018) note that the FOIA only appears to exist and cannot be effectively implemented in Nigeria. The lack of political will on the part of the leaders who should be in charge of enacting such legislation may be the cause of the delayed implementation (Garba, 2013).

Government officials' worries that increased public access to information made available by the FOIA will expose them to political opposition is one of many reasons for the lack of political will. As a result, the laws may reveal the shortcomings of government initiatives and strategies. The Freedom of Information Act (FOIA) makes many promises. However, its applicability in Nigeria, where people have the propensity to break the law without consequence, limits its potential for effective journalism practices.

What are the problems and difficulties with the Nigerian Freedom of Information Act, and how have journalistic practices changed since the Act's passage? Has journalism benefited from the changes made by the Act? Have Nigerian journalists utilized the Freedom of Information Act to increase the effectiveness and efficiency of their watchdog role? Has the introduction of FOIA led to a more successful investigation of power? These issues will be discussed in more detail in this study.

Conceptual Review of Literature:

Concept of Freedom of Information Act 2011

While General Sani Abacha was in power in Nigeria, the *FOI Bill* was first introduced. The Media Rights Agenda (MDA), Civil Liberties Organization (CLO), and Nigerian Union of Journalists (NUJ) were all involved in the campaign to pass the *Freedom of Information Act (FOIA)*. President Goodluck Jonathan signed the *Freedom of Information Act* into law on May 28, 2011. In addition to establishing procedures for achieving these objectives, the FOIA also protects public records and information, increases public access to certain government information, and shields serving public officials from negative repercussions for improperly disclosing specific categories of official information. The *2011 FOIA* consists of 32 sections, with the following important clauses:

Right of Access to Records

Regardless of age, ethnicity, gender, or other characteristics, everyone has the right to access or request information held in the custody or control of any public official, agency, or institution, whether in writing or not. The FOIA further relaxes the shaky legal requirement by stating that a requester is not required to express a particular interest in the information or record sought. The applicant's motivations could be academic, professional, commercial, private, or unrelated (Ozekhome, 2014).

Response to Access Request

Following Sections 6, 7, and 8, the FOIA mandates that public institutions respond to requests for records or information within seven days of receiving them. A public or governmental entity must also notify the applicant in writing when it denies access to information. The FOIA also provides that an explanation should be made for informational denial. In a case of denial, the applicant may appeal the decision to have it reviewed by a court. As provided in FOIA, any denial notification will include the names, titles, and signatures of all parties accountable for denying any application.

Penalties for Destruction of Records

The FOIA section 10 makes it unlawful to falsify or destroy records and documents. As contained in the act, any officer or head of a government or public institution who willfully destroys or attempts to alter any public record while it is still in his or her possession before giving it to the person applying for it risks a minimum of one-year prison sentence as this action is considered to be a criminal offence. If found guilty under Section 7(5) of the act, any institution or public official who improperly refuses access to information or records will be fined ₦500, 000.

Protection of Whistleblowers

Section 27 of the FOIA grants public officials' immunity from civil or criminal liability for disclosure in good faith of any information or any part thereof by the Act. A public officer may disclose information to any person, with or without authorization, that he reasonably believes shows: (1) A violation of any law, rule, or regulation, (2) Mismanagement, gross waste of funds, or abuse of authority and (3) A substantial and specific danger to public health or safety. Furthermore, no civil or criminal action can be meted out against anyone receiving or disclosing the information. No one who receives information should reveal the information source or the informant's identity.

Exemption of Classified Information from Disclosure

Public officials are exempt from civil or criminal liability under Section 27 of the FOIA for making a good faith disclosure of any information or portion of information covered by the Act. A public official is allowed to reveal information to anyone, with or without authorization, if he has a good faith belief that it demonstrates the following: abuse of any law, rule, or regulation; misappropriation of public funds; abuse of authority; or a serious risk to public safety. Anybody who receives or discloses the information is not subject to civil or criminal liability. The informant's identity or source of information should never be disclosed.

Nature of Journalism practice in Nigeria

Gathering, confirming, reporting, and analyzing information about current events, such as trends, issues, and people, is the practice of journalism. Suntai, Targema, and others (2018) define journalism as gathering, preparing, and disseminating news and current events. Journalism practice varies because different political philosophies prevail in various societies. It was correctly stated in 1956 by Siebert, Peterson, and Schramm in their *Four Theories of the Press* (Authoritarian, Libertarian, Soviet-Communist, and Social Responsibility theories) that each country's media adopts the structure and aesthetics of the ruling authority.

According to Article 19, a global human rights organisation report, 60 Nigerian journalists were attacked between January 2020 and October 2020. Three journalists were reportedly killed, one by security personnel during a protest in Abuja and the other by unidentified assailants in Adamawa and Nasarawa. In addition, 34 journalists were assaulted in the Federal Capital Territory, Lagos, Ondo, Osun, Abia, Anambra, Bauchi, and Edo (FCT). While covering the nationwide #ENDSARS anti-police brutality protests in October, 18 people experienced similar assaults. Six journalists were held for a few days before being released. The remaining six were primarily accused of terrorism or cybercrime when they appeared in court. According to Fatou Jagne Senghore, Regional Director of Article 19 West Africa, the authorities failed to defend journalists from attacks.

Is Press Freedom absolute in Nigeria?

The two cornerstones of press freedom are the freedom to report the truth and the public's right to know it. Through public responses to various issues that arise in the nation as a result of governmental decisions, directives, laws, and policies, press freedom enables the government to understand the opinions of the governed. According to Oloyede (2008), press freedom is the right to possess the media and use it for instruction, entertainment, and information free from restrictions or worries about victimization or molestation. In essence, there should be freedom to gather and disseminate information, safeguard information sources, and inform the public without obstruction from the government.

Journalists have been accustomed to having unrestricted access to information and the freedom to carry out their jobs since the FOIA was passed in 2011. The right to information is restricted by specific laws, according to Oloyede (2008), who argued that these laws ought to be repealed. Even though the FOIA is in place, *paripassu* laws like the Official Secrets Act, Evidence Act, Public Complaints Commission Act, Statistic Act, and Criminal Code seek to impede the free flow of information and thereby restrict the right of the press and the general public to access information.

A demonstration was held in July 2021 against the laws governing the Nigerian Press Council and the National Broadcasting Commission. Olusegun Odeunmi, the chair of the House Committee on Information, National Orientation, Ethics, and Values, sponsored the proposed laws. As a form of opposition to the law, newspapers in Nigeria jointly published the headline "Information Blackout" on the front page. Both bills sought to strengthen their respective organizations, but many Nigerian journalists thought that the nation's history of free press would end if they were passed. The Nigerian Press Council Amendment Bill stipulates that, without the Senate's approval, the president has total discretion to appoint all board members of the Nigerian Press Council, including the chairman.

Additionally, the bill would grant the information minister the power to establish a National Press Code, approve the creation, ownership, and operation of newspapers, and take severe action against any media organization that disobeyed the code, including the revocation of its license. A journalist could be deregistered, fined, or sentenced to jail term. The press has had some freedom in Nigeria since the nation proclaimed its independence, but not all of it. In a democratic society, the press is always subject to acceptable or legitimately justified laws.

Empirical Review

According to Apuke (2016), who looked at how the *Freedom of Information Act* affected Nigerian journalism, journalists need enough freedom to perform their jobs effectively. By improving access to information about government operations, the *Freedom of Information Act* will lay the groundwork for an open political system and, as a result, an open society. Nnadi & Obot (2014) looked into the journalists' FOIA responses in Akwa-Ibom State.

Findings demonstrated that FOIA is a positive development and that institutions and the government should not restrict journalists' access to information. Inokuba (2014) conducted research on the potential and difficulties of the *Freedom of Information Act* and democracy and concludes that the right of the public to access information held by public institutions is a fundamental prerequisite for the establishment of good governance and the consolidation of democratic norms and practices. Access to information held by public bodies is also equivalent to opening up government to citizens.

Apuke (2017) found that respondents who were aware of Nigeria's 2011 FOI Act connected with open data practise but that citizens still need to utilize the Act fully after conducting a second study on how open data and freedom of information practices intersect. Data or information keepers also came up with excuses for not granting these requests. According to a study on FOIA and journalism by Oluwatomi (2017), for the Act to be effective, the general public must know how it is applied.

Similarly, no supervisory or regulatory body oversees the legislation's implementation. A study on the effect of the Freedom of Information Act on journalism practice was done by Abone and Kur in 2014. Their conclusions showed that the investigated journalists were knowledgeable about FOIA guidelines. Additionally, the Act was seen by journalists as having a more favourable effect on the practice of journalism.

Accordingly, earlier research revealed that journalists think the FOIA will be crucial in moving Nigeria towards development as a communication phenomenon. Additionally, it will promote accountability and good government practices while increasing public involvement in government initiatives and policies. As a result, in order to perform their duties as watchdogs, uncover, analyze, and inform the public about government activities, journalists need access to information. Despite the FOIA's existence, journalists are frequently refused access to information in public and private organizations or are simply unaware of its existence. Other issues were the need for more public understanding of the application and efficacy of FOIA and the absence of a supervisory regulatory body to oversee the legislation's implementation.

Theoretical Framework

Libertarian media theory serves as the foundation for the study. Libertarian media theory was endorsed by Lao Tzu, John Locke, John Milton, John Stuart Mill, and Thomas Jefferson (Shraddha, 2018). The press informs, amuses, sells, and helps to uncover the truth, claims the libertarian media theory. Anyone may publish their ideas and opinions there without restriction, but they must not be offensive or defamatory. The following are the central notions of this theory: (1) Censorship of publications should not exist. (2) There should be no licencing for publications. (3) Data collection should not be subject to any legal limitations. (4) Journalists must be able to operate independently of their employers or organizations.

According to this study, the media should be unhindered by the government to act as a free marketplace for concepts for the benefit of the populace. According to what the FOIA advises, a person or organisation, including the media, should be free to publish and express information. The media should give people comprehensive information and viewpoints, allowing them to use reason to determine the best course of action. Additionally, there should not be any media control now that the FOIA has been implemented. The media interpret the information, who also select the information they need and determine its veracity.

Issues and Challenges of FOIA in Nigerian Journalism Practice

Only parts 1 and 3 of the Freedom of Information Act (FOIA) allow for public access to information; other sections, including 11, 12, 14, 15, 17, 18, and 26, do not. In other words, the Act has more access restrictions than exemptions. Section 26 forbids the publication of materials kept in the federal government's national

library, national museum, or archives; Section 18 forbids the publication of test questions, examination results for employment, buildings or construction plans made with public money, library circulation information, or any records linking users to specific materials.

Similarly, Section 15 forbids the disclosure of any information that includes financial information, trade secrets, proposals for contracts, grants, and agreements, as well as environmental testing results for a public institution. A request for information that includes the file and personal information of clients, patients, students, residents, or people receiving financial, educational, or vocational guidance directly or indirectly from public institutions is denied under Section 14. A request for information about administrative proceedings, law enforcement, or the internal workings of a public institution is denied under Section 12. In contrast, a request for information about the conduct of international affairs or the defense of the Federal Republic of Nigeria is denied under Section 11.

As a result, these exemptions have made it challenging for individuals and journalists to access information kept by the government and its institutions. Journalists find it challenging to comprehend Section 29, which deals with national security because it enables public officials to conceal it to suppress the public's right to know. Because of this, only some people use the Freedom of Information Act to acquire important information for public use. Instead of using FOIA, journalists can more easily obtain official information through informal contacts. As a result, it is assumed that the FOIA's provision could be more helpful.

Counter Legal Provisions

Legal provisions in Nigeria conflict with the *Freedom of Information Act*. Among them are the *Official Secrets Act*, the *Evidence Act*, the *Statistics Act*, and the *Public Complaints Act*. The restriction of information flow is a critical factor in Nigeria's rising crime rate. The interference with the smooth operation of the FOIA and the unnecessary restriction of access to crucial information that should be made available to the public and journalists

Waste of Time

It takes too long to access government records in this fast-moving digital age. A 90-day response time limit applies to FOIA requests. The 90-day response period renders information obsolete and gives public officials the discretion to thwart FOI requests, especially those from journalists. After that, the journalist who submitted the FOI request may seek access to the information in court. By this time, the information might have become outdated. The cost of enforcing compliance through the courts could be high for media companies already dealing with declining revenue.

Ignorance of the FOIA by Public Servants

The *Official Secret Act* forces public employees to live in secrecy, and ignorance of the FOIA's provisions encourages poor implementation. The only reason that public employees abide by information requests is that the courts have ordered them to. In public institutions, access to information is challenging because of a weak culture of record-keeping and retrieval. In Nigeria, some laws are fully functional. These laws, intended to limit the free flow of information, include the *Official Secrets Act*, the *Evidence Act*, the *Public Complaints Commission Act*, the *Statistic Act*, and the *Criminal Code*.

These laws may impact the long-term effectiveness of the Act as some corrupt public officials may take advantage of these features. It is challenging to get information from any government agency because of the level of secrecy. Several laws, most notably the *Official Secrets Act*, prohibit civil servants from disclosing government information. These Acts also make it unlawful to obtain or reproduce such information.

Poor Record Management

In a survey on records management in the public and private sectors that Akor and Oko (2015) conducted, the results revealed that both the public and private sectors gave records management low marks. It implies that issues with record-keeping are disregarded, and the right to information suffers as a result. It is expected that all government information databases should be open and transparent for easy access to information, even though technology makes it easier to implement transparency reforms. This can have a negative impact on FOIA reforms.

Digital data and documents will only be simple to access after creation if they are protected. When official records are kept on personal computers, emails, or social media accounts, it can be challenging to assess them after a person retires or leaves a specific position or organisation.

Modified Sections of the Official Secret Act

- ❖ In 2019, *Whistleblower Protection Act* was enacted to modify some sections of the Official Secrets Act. Some of the modifications include the following:
- ❖ The new act protects individuals who disclose information about wrongdoing or corruption in the government or private sector. The act ensures whistleblowers are not victimized, harassed or intimidated for their disclosure.
- ❖ The new act reduces the penalties for unauthorized disclosure of information. The old act prescribed a prison sentence of up to 14 years, but the new act limits the sentence to a maximum of five years.
- ❖ The new act allows individuals to disclose the information if it is in the public interest, even if it is classified. The public interest defense is a significant departure from the old act, which did not recognize any exceptions to the prohibition on unauthorized disclosure.
- ❖ The new act permits the disclosure of classified information to law enforcement agencies investigating crimes, particularly corruption-related offences. This provision makes it easier for law enforcement agencies to investigate and prosecute corrupt public officials.
- ❖ The new act protects journalists who publish classified information if they can prove that the disclosure was in the public interest. The old act did not protect journalists who published classified information, even if it was in the public interest.

Conclusion and Recommendation

The FOIA Bill was first proposed in 1999, like a broken hope. After all, these Acts did not provide the relief that was anticipated. This Act is outside the public's best interests because it grants exemptions in more crucial public interest areas than in general need areas. The absence of immunity or any specific rights or protections for journalists renders the provisions of the Act insufficient. The Act puts journalists' hopes for a free press in jeopardy. The press places the most emphasis on the exemption sections (Sections 11, 12, 14, 15, 16, 18, 26, 28 and 29), particularly Section 29, which emphasizes the confidentiality of the classified documents.

The Freedom of Information Act (FOIA) has allowed citizens to access information free from any public institution (though there are some exceptions). It is sufficient for the general public, who only needs this information in one or two isolated cases of public interest. However, journalists frequently need many data to do their jobs. This calls for more protection or coverage. Should journalists still have access to sensitive and secret documents?

The press's social responsibility role will be fruitless once the legislators decide it is necessary to compel the government to grant it the independence it needs to effectively carry out its watchdog function. The Freedom of Information Act (FOIA) should be updated to reflect current circumstances, especially regarding exemptions, other legal provisions, and the promptness with which official FOIA requests are communicated to requesters. Journalists and other interest groups should lead these amendments in the national assembly. In line with that, this paper suggests the following:

- Senior government employees who hold the information requested by the public should receive updated training on the FOIA's rules so they can respond to requests for information appropriately. Public officials' ignorance of the provisions of FOI laws, particularly regarding what information should be in the public domain, ranks among the world's most severe problems with these laws.
- There should be administrative sanctions in addition to the statutory legal penalties for public officials who unnecessarily refuse access to public information protected by the FOIA. The penalty will deter them from hiding behind national security or official secrets clauses, summarily rejecting FOI requests, wasting time trying to thwart FOI requests, or otherwise withholding information from the public.
- The Newspaper Proprietors Association of Nigeria (NPAN) and the Nigerian Union of Journalists (NUJ), should include FOI awareness and application as part of their regular training for journalists in order to make FOI a more effective tool of trade.

References

- Abone, G. O. & Kur, J. (2014). Perceptual influence of freedom of information act on journalism practice in Nigeria. *Arabian Journal of Business and Management Review*, 3 (7), 2-14.
- Akor, M. I. & Oko, M.A. (2015). Promoting transparency and accountability in governance in Nigeria through the Freedom of Information Act. *African scholar journal of humanities and social science*, 2 (4) 34-42.
- Apuke, D. O. (2016). An evaluative study of the freedom of information act on journalism practice in Nigeria. *New Media and Mass Communication*, 53(1), 11-22.
- Apuke, D. O. (2017). An Appraisal of the freedom of information act (FOIA) in Nigeria. *Canadian Social Science*, 13 (1), 9-11.
- Article 19 (2020). Nigeria: crackdown on journalists suffocates press freedom. <https://www.article19.org/resources/nigeria-crackdown-on-journalists/>
- Ekpu, R. (1996). Journalism: An endangered profession in O. Dare, & A.O. Uyo, (ed.) *Journalism in Nigeria: Issues and Perspectives*. Lagos: Nigerian Union of Journalists. Lagos State Council.
- Freedom of Information Bill, National Assembly (2011). <https://www.nassnig.org>.
- Garba, M. (2013). Journalism in an era of freedom of information act in Nigeria: New opportunities or new handicaps? Paper delivered at a colloquium on FOI Act and press freedom in Nigeria, in Abuja, December 4, 2013.
- Ayo, A. (2021, *Vanguard*, September). Press Freedom an antidote to secretive and abusive government in Nigeria. <https://www.vanguardngr.com/2021/08/press-freedom-an-antidote-to-secretive-and-abusive-government-in-nigeria>.
- Inokuba, K. P. (2014). Freedom of information act and democratic consolidation in Nigeria: Prospects and challenges. *International Journal of Development and Sustainability*, 3(12), 9-18.

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International Law Office, (2013). Sixty-fifth session of the international law commission report of 2013. <https://legal.un.org/ilc/sessions/65/>.

Lidberg, J (2017). The international freedom of information index: Tracking the promise and practice of FOI. *Studies in Political Communication*, 1(22), 9-11.

Malayo, K.A. (2012). An evaluative study of the freedom of information Act on journalism practice in Nigeria. (*unpublished master's dissertation*). University of Nigeria, Nsukka

Madubuike, E. & Mbaguha, J.N. (2018). Obstacles to implementing the Freedom of Information Act, 2011 in Nigeria. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 9(2), 96-109.

Nnadi, E. C. & Obot, C. (2014). Akwa-ibom State journalist-reaction to the freedom of information Act. *International Journal of Asian Social Science*, 4(4), 544-561.

Oloyede, I.B. (2008). Free press and society: Dismantling the culture of silence. Stirling-Horden Publishers Ltd. Oyo Road, Orogun, Ogun State.

Oluwatomi, C.A. (2017). The freedom of information act and the practice of journalism in Nigeria. An Appraisal. *Journal of Research in National Development*, 15(1), 175-184.

Omotayo, F. O. (2015). The Nigeria freedom of information law: Progress, implementation, challenges and prospects. *Library Philosophy and Practice journal*, 11 (8), 10-22.

Ozekhome, M. A. (2014). The Freedom of Information Act: The journey so far: Paper delivered at the Faculty of Law, Benson Idahosa University, Benin on 30th April 2014.

Obayi, P.M., Anorue, L.I, Onyebuchi, C.A. Umeokeke, C. & Etumnu, E.W.(2020). Journalists' perception of the freedom of information act (FOIA) in Nigeria: A study of journalists in Imo State. *Media and Communication Currents*, 2(1), 108-128.

Obot, O.T, (2014). Understanding the concept of press freedom in Nigeria, challenges and prospects. *Journal of communication*, 2(3), 41-68.

Shraddha, B. (2018). Libertarian theory of mass communication. <https://www.businessstopia.net/mass-communication/libertarian-theory-mass-communication>.

Suntai, D. I & Targema, T.S. (2018). Media and the civil society in the fight against corruption: The case of Nigeria. *International Journal on Robotics, Automation and Sciences*, 1(1), 49-67.