

## THE ESTABLISHMENT OF THE FREEDOM OF INFORMATION ACT 2011

On the 28<sup>th</sup> of May 2011 President Goodluck Jonathan of the Federal Republic of Nigeria signed into law “**The Freedom of Information Act 2011**” (the Act).

This review provides an insight into the key aspects of the new law.

### ESTABLISHMENT:

The purpose of the Act is to make public records and information freely available to the public, protect public records on grounds of public interest and personal privacy, as well as protect public officers who provide such information without authorization.

### RIGHT TO ACCESS INFORMATION:

The Act irrespective of any other Act, Law or Regulation, gives any person the right to access or request information in the custody or possession of any public official, agency or institution howsoever described.<sup>1</sup> What's interesting is the applicant need not show any specific interest in the information being sought.<sup>2</sup> However the Act, in its wording, thereafter limits the right to proceed to Court and compel dissemination, on persons entitled to the right to information under the Act.<sup>3</sup> This in no way limits the fundamental rights of “**any person**”, as established by section 2(1) of the Act, to demand information in the hands of public officers and naturally proceed to Court, if rejected.

---

<sup>1</sup>Section 2(1)

<sup>2</sup>Section 2(2) - The provision excludes hurdle of locus standi. However this may lead to a barrage of frivolous applications.

<sup>3</sup>Section 2(3)

<sup>4</sup>Section 32

Whilst perusing the definition section of the Act a person is said to include a corporate sole, and also body of persons whether corporate or incorporate; acting individually or as a group. This will appear to mean that a single individual is not recognized as a person under the Act<sup>4</sup>.

The right to access information guaranteed under the Act is in relation to **public institutions, only**. Most re-assuring is the almost boundless definition of public institutions.

According to the definition section of the Act a public institution for the purpose of the Act means **“any legislative, executive, judicial, administrative or advisory body of the Government, including boards, bureau, committees or commissions of the State and any subsidiary body of those bodies including, but not limited to committees and sub committees which are supported in whole or in part by public fund or which expends public fund and private bodies providing public services, performing public functions and utilizing public funds.”**<sup>5</sup>

Furthermore under the terms of section 3(7) of the Act public institutions are described as **“all authorities whether executive, legislative or judicial agencies, ministries and extra-ministerial departments of the government, together with all corporations established by law and all companies in which government has a controlling interest, and also private companies in which utilizing public funds, providing public services or performing public functions”**<sup>6</sup>.

Generally, there is no right to access information from private organizations. However, the rule changes where a private Company provides a public service, performs public functions and/or utilises public funds. It is imagined that the need to provide information mandatorily will be limited specific projects relating to public services, public functions and/or utilization of public funds.

Private Companies are however unable to embrace the right to privacy in the face of overriding public interest. Provided the information in question is not within the exemption list under the Act (which will be discussed later) Public Institutions are at liberty to disclose information on Private Companies, within their custody, provided it is in the public interest to do so.

### **INFORMATION ABOUT GOVERNMENT INSTITUTIONS:**

In section 3 of the Act it is mandatory for all public institutions to not only keep records and information about all its activities, operations and businesses, but in addition **“ensure the proper organization and maintenance of all information in its custody in a manner that facilitates public access to such information”**.<sup>7</sup>

The Act goes on to demand of public institutions publication of the following information:

- (a) A description of the organization and responsibilities of the institution including details of the programmes and functions of each division, branch and department of the institution;
- (b) a list of all classes of records under the control of the institution in sufficient detail to facilitate the exercise of the right to information under this Bill;

---

<sup>5</sup>Section 32

<sup>6</sup>Section 3(7)

<sup>7</sup>Section 3(1) and Section 3(2)

- (c) a list of all manuals used by employees of the institution in administering or carrying out any of the programmes or activities of the institution;
- (d) a description of documents containing final opinions including concurring and dissenting opinions as well as orders made in the adjudication of cases;
- (e) documents containing substantive rules of the institution;
- (f) documents containing statements and interpretations of policy which have been adopted by the institution;
- (g) documents containing final planning policies, recommendations, and decisions;
- (h) documents containing factual reports, inspection reports, and studies whether prepared by or for the institution;
- (i) documents containing information relating to the receipt or expenditure of public or other funds of the institution;
- (j) documents containing the names, salaries, titles, and dates of employment of all employees and officers of the institution;
- (k) documents containing the rights of the state, public institutions, or of any private person(s);
- (l) documents containing the name of every official and the final records of voting in all proceedings of the institution;
- (m) a list of files containing applications for any contract, permit, grants, licenses or agreement;
- (n) a list of reports, documents, studies, or publications prepared by independent contractors for the institution;
- (o) a list of materials containing information relating to any grant or contract made by or between the institution and another public institution or private organization; and
- (p) the title and address of the appropriate officer of the institution to whom an application for information under this Bill should be sent, provided that the failure of any public institution to publish any information under this subsection shall not prejudicially affect the public's right of access to information in the custody of such public institution.<sup>8</sup>

Public institutions are compelled to disseminate, widely, the information set out above to members of the public through various means including print, electronic and online sources, and at the offices of such public institutions. They are further required to review update and review information periodically and immediately upon the institution of changes, failing which persons entitled to the right of access conferred by the Act may commence proceedings before the Courts to enforce compliance<sup>9</sup>.

### **REQUEST FOR ACCESS TO INFORMATION – THE PROCEDURE:**

Once information is requested, under the Act, the public institution shall within 7 days after receipt of the request make the information available to the applicant. However where the public institution considers that the application should be denied, the institution shall give written notice to the applicant explaining that access to all or part of the information will not be granted, the reasons for the refusal and the section of the Act under which it is refused.<sup>10</sup> Following on from this the notice of refusal shall state the specific provisions of the Act upon which the refusal was based and shall further state that the applicant has the right to have the decision reviewed by a Court.<sup>11</sup>

---

<sup>8</sup>Section 3(3)

<sup>9</sup>Section 3(4-7)

<sup>10</sup>Section 5(a) and 5(b)

<sup>11</sup>Section 8(1)

In the event that a public institution receives an application for access to information and the institution is of the view that another public institution has a greater interest in the information, the institution to which the application is made may within 3 days but not later than 7 days after the application is received transfer the application, and if necessary, the information to the other public institution. However, such decision to transfer can be reviewed by the Courts.<sup>12</sup>

It is interesting to note that the Act does have a human face. The drafters leave room for extension of time within which to supply the records where the application relates to a large number of records or consultation on the release of the information is necessary<sup>13</sup>.

### **EXEMPTED INFORMATION:**

A cursory glance at the provisions of Section 2 of the Act would presuppose that there are no exceptions or limits to the class of information that an Applicant may request. However sections 13 to 20 of the Act give a detailed category of information which a head of government or public institution may refuse to provide.

An application for information may be denied if such information contains the following matters:

- (a) Information that will interfere with pending or actual and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency.
- (b) Information the disclosure of which could reasonably be expected to be injurious to the security and penal institution.
- (c) Information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies on the commission of any crime.
- (d) Information that could reasonably be expected to facilitate the commission of an offence.
- (e) Legal Practitioner-Client privilege
- (f) Health Workers- Client privilege
- (g) Journalism confidentiality privileges

However, where the information contains personal information, the public institution shall disclose such information if:

- (a) The public interest in disclosing the information outweighs whatever injury that the disclosure would cause, and clearly outweighs the protection of the privacy of the individual to whom such information relates.
- (b) The individual to whom it relates consents to the disclosure.
- (c) The information is publicly available.

Personal information under the Act means any official information held about an identifiable person, but does not include information that bears on the public duties of public employees and officials.

An Applicant who has been refused access to information or a part of it may apply to the Court for a review of the matter within thirty days and such application to Court shall be heard and determined summarily.

---

<sup>12</sup>Section 6(1)

<sup>13</sup>Section 7(a) and 7(b)

## CONCLUSION:

Over the past decades several civil society organizations and journalists fought tirelessly for the enactment of these laws. It remains to be seen what steps will be taken by “persons” to enforce what the writer considers to be such a useful tool in the fight against corruption and abuse of office by public officials.

However there are a number of stumbling blocks. For instance under the Official Secrets Act a public officer may validly withhold information considered “**classified**”. Under our evidence Act a public officer can equally refuse to disclose information availed to him in official confidence, particularly if such information is considered detrimental to public interests.<sup>14</sup> Although the Act seeks to protect Public Officers from liability under the provisions of the Official Secrets Act, the Criminal Code and the Penal Code public officers are able refuse disclosure information and until these statutes are repealed there is likelihood of because those Statutes have not been expressly repealed by an Act of the National Assembly.<sup>15</sup>

---

<sup>14</sup>See CAP 03 Laws of the Federation of Nigeria 2004. Further restrictions are contained in section 8 of the Public Complaints Commission Act, CAP P37, Laws of the Federation of Nigeria 2004; section 9 of the Statistics Act CAP S10 Laws of the Federation of Nigeria 2004. Evidence Act, CAP E14 Laws of the Federation of Nigeria., sections 168 and 220