THE NEED FOR FREEDOM OF INFORMATION

Linda Anyalebechi
Medical Library - College of Medicine,
Chukwuemeka Odumegwu University Teaching Hospital, Amaku Awka

Abstract
The paper examined the need for freedom of information in the practice of journalism. The Nigerian perspective was extensively discussed. Press across the globe ought to disseminate information to the masses without fear of being victimized. However freedom of information is impaired in many countries of the world, Nigeria inclusive. The paper made a broad overview of the freedom of information Act. The challenges of the media in implementing the FOI Act were also highlighted. Useful recommendations were proffered to assuage the problem.

Keywords: information, press, communicate

Introduction
There is a universal believe that press freedom is hard to define. While some school of thought see it as “the right to communicate ideas, opinions and information through the printed word without government restraint”. Press freedom is practically the same as the freedom of expression which many people believe is the mother of all freedoms. Press freedom connotes a free flow of information and the rights to disseminate information. Also, press freedom can as well be described as Liberty of the press. It means laying no previous or prior censorship of publication. Every person has the right to lay what sentiments, facts, information or publication he has before the public. To forbid this right is to destroy freedom of expression and the press. But where a person publishes what is unlawful, criminal, defamatory or mischievous, he must face the consequences of his publication.

According to Osibanjo and Fogam, 1991, “Liberty of the press consists in laying no previous restrain upon publication and not in freedom from censorship for criminal matters published. Every man has the undoubted right to lay what sentiment he pleases before the public… to forbid that is to destroy what is illegal or mischievous he must face the consequences of his own temerity”.

In summary, the liberty of the press is a right with a responsibility. The freedom of expression which Ray Ekpu (1998) regarded as the grand mother of all freedom has been given an important place in virtually all international and national charters of human rights.
A good example is the Article 19 of the Universal Declaration of Human Right which states that:
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontier.

Article 19 (1) of the International Convention on Civil and Political Right states that “everyone shall have the right to hold opinion without interference.”
The African charter on Human and Peoples’ Right Article 9 says “Every individual shall have the right to express and disseminate his opinions within the law.”

The Freedom of Information Act has been an age long yearning of Journalists in the country. Over the years, there has been a high clarion call for unhindered access to information concerning public institutions which is aimed at ensuring accountability and transparency in the activities of public office holders.

However in 2011, the administration of former President Goodluck Jonathan took a bold step in signing into law the Freedom of Information Bill, thereby making it an Act and left at the beehive of Journalists and others recognized by the Act to seek information from any public institution. Although since the coming into play of the Act, some pundits are of the opinion that it has not been maximized fully by journalists. They cited occasions where journalists fall short of presenting full facts in their reportage as well as the issue of some public officers hoarding information as against the provisions of the Act.

That notwithstanding, others are however of the opinion that the Act has strengthened the duties of journalists, more especially in investigative journalism. Some public office holders or civil servants are willing to talk these days, though under anonymity to avoid being witch hunted.

Some are still of the argument that a lot still needs to be done in expanding the scope of the Act to ensure that institutions of Government are open to public scrutiny and assessment. The rest of the work will further explain the FOI Act, explaining its provisions, challenges in its implementation and possible solutions in ensuring it lives up to its expected result.

The Freedom of Information Act

Before moving into the concept of FOI Act, it will be important if we take a quick look into its historical background.

As far back as 1980, the Commonwealth Law Ministers declared in the Barbados Communique that: “Public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information.”

Collective policy statements since then have encouraged member countries to regard freedom of information as a legal and enforceable right.

The idea of a freedom of information law for conceived in 1993 by three different organization independently of each other. The Media Rights Agenda (MRA), Civil Liberties Organisation (CLO) and the Nigerian Union of Journalists (NUJ), subsequently agreed to work together on a campaign for the enactment of a Freedom of Information Act.

The objective of the campaign was to lay down as a legal principle the right of access to documents and information in the custody of the government or its officials and agencies as a necessary corollary to the guarantee of freedom of expression. It was also aimed at creating mechanisms for the effective exercise of this right.

The consultations among the initial partner organizations were geared, among other things, towards determining the various interest groups likely to be affected by the legislation; those who should have a right or standing to request information under a freedom of information regime and under what circumstances information may be denied those seeking them; what departments or organs of government would be responsible for releasing information and documents to those seeking them; and determining the agencies and arms of government to which the legislation would extend.

The Bill’s tortuous road to becoming an Act is perhaps a major reason why there is a lot of hurrah from the media and civil society groups, who had been resilient in pushing for the passage of the Bill. In fact there were at a point fears that the president would not give his assent to the Bill,
especially given the comment by the former presidential adviser on National Assembly Matters Alhaji Aba Aji, who said that the Bill was ‘dead on arrival’.

Following extensive research, Media Rights Agenda’s Legal Directorate headed by Mr. Tunde Fagbohunlu of the law firm Aluko and Oyebode, produced in 1994 a draft bill entitled “Draft Access to Public Record and Official Information Act”. This translated into the Freedom of Information Act after undergoing several modifications. The Act was revived during the fifth National Assembly in 2003 and passed by both chambers in the first quarter of 2007. It was however vetoed by President Olusegun Obasanjo. It returned to both chambers of the 6th National Assembly in 2007 before eventually becoming Law.

Therefore, after a tortuous 5 years journey through the legislative process that started on December 9, 1999 when it was first gazetted, the Freedom of Information Act was eventually passed into law on the 28th of May, 2011, the eve of the inauguration of the seventh Parliament of the National Assembly. The law, which is the oldest legislation in the works in Nigeria’s Legislative history, effectively deals with requests for government records and is consistent with the belief that the people have the right to know about them.

**Provisions of the Act**

The basics of the Act is the belief that the government is accountable for its actions and that the public possesses a right to obtain information about those actions. This can be gleaned from the preamble to the Act which states thus:

“An act to make public record and information freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain official information and establish procedures for the achievement of those purposes and related purposes thereof”.

The Act establishes a right-to-know legal process by which requests may be made for government held information, to be received at the payment of standard charges for document duplication and transcription where necessary.

The Act provides inter alia for the right of information, those who should have a right or standing to request information under a freedom of information regime and under what circumstances information may be denied those seeking them; what departments or organs of government would be responsible for releasing information and documents to those seeking them; and determining the agencies and arms of government to which the legislation would extend. And the circumstances under which the right to know will be denied.

The Act endows citizens with the “right to access or request information whether or not contained in any written form, which is in the custody or possession of any public official agency or institution howsoever described”.

Section 3 of the Act mandates public institutions to ensure that they keep record and information about their activities and operations. A public institution shall ensure the proper organization and maintenance of all information in its custody in a manner that facilitates public access to such information.

List of information required to be published or kept in the custody of a public institution is contained in Section 3 (3) and some of them includes:

- Description of the organization and responsibilities to the functions of each division.
- A list of all classes of records under the control to facilitate the exercise of the right to information under the Act.
- Documents containing factual reports, inspection reports whether prepared by or for the institution.
- Documents containing information relation to the receipt or expenditure of public or other funds of the institution among a host of many others.

A public institution has the duty to ensure that information referred to above is widely disseminated and made readily available to members of the public through various means, including print, electronic and online sources and at the offices of such public institutions. Failure to do so, proceedings may be instituted by any person entitled to the right of access to compel public institutions to compel with the provisions of the Act.

With the law in place, any public institution that fails to provide information to persons entitled to the right of information under the Freedom of Information law can be sued by the persons seeking for the information, compelling it to comply with the provisions of the law.

Before it was signed into law, a copy of the harmonized version of the bill, stipulates under Section 1, Sub-section 3 of the new law that, “Any person entitled to the right of information under this Act, shall have the right to institute proceedings in the Court to compel any public institution to comply with the provision of this Act.” Accordingly, Section 2, Sub-section 1 of the new legislation compels “A public institution to ensure that it keeps records and keeps information about all its activities, operations and businesses.” The law further requires public institutions to “ensure that information referred to in this section is widely disseminated and made readily available to members of the public through various means, including print, electronic and online sources, and at the offices of such public institutions.” Institutions are further required to update and review information required to be published under the law, periodically and immediately whenever changes occur. The FOI Bill describes public institutions as all authorities, whether executive, legislative or judicial agencies, ministries, and extra-ministerial departments of government, together with all corporations established by law and all companies in which the government has controlling interest, and private companies utilising public funds, providing public services or performing public functions.

**Exemptions under the FOI Act**

Freedom of Information is never absolute in any country of the world, because such freedoms necessarily have to be balanced with other equally important human values, such as; the right to privacy, protection of reputation and national security. Therefore, the right of access to records under the control of a government institution is set out in section 1 and the limitations to the right are set out in section 12 through 18 and 27.

The exemptions are: exemption of international affairs, exemption of law enforcement and investigation, exemption of personal information, exemption of third party information and exemption of professional and other privileges.

a. Exemption of International Affairs: It provides as follows “a public institution may deny an application for any information the disclosure of which may be injurious to the conduct of international affairs and the defense of the Federal Republic of Nigeria”.

b. Exemption of Law Enforcement and Investigation: Contained in section 13 (1) and relates to the investigative or compliance activities of an agency and the enforcement of the law, including the protection of public safety. An agency is not required to disclose documents which would prejudice investigations or possible prosecutions or reveal the identity of confidential informations.

c. Exemption of Personal Information: Has to do with information that identifies any person, their address or location or information that can enable their identity, address or location
to be reasonably determined. It comes in the ambit of section 15 of the Act. The exemption is qualified in the sense that personal information shall be disclosed if the interest of the public in the disclosure clearly outweighs the protection of the privacy of the individual to whom the information relates.

d. Exemption of Third Party Information: If a giver document contains a trade secret, this is a sufficient basis in itself upon which to found an exemption, subject. It is obtainable in section 16 of the Act and is basically for documents relating to business or commercial activity.

e. Exemption of Professional and Other Privileges: Section 17 of the Act provides that a public institution may deny an application for information that is subject to the following privileges; legal practitioner-client privilege, health workers-client privilege, journalism confidentiality privilege and any other professional privileges conferred by an Act. Section 18 of the Act also exempts documents that contain information about research that is undertaken by faculty members.

Benefits of FOI Act
Since its passage into law the FOI Act has become a major focus of media practitioners and other rights activists in Nigeria. It is widely held belief that FOI Act makes both government and private institutions serving public functions accountable. This is perhaps because freedom of information is the cornerstone in promoting democratic participation and good governance. Reason been that an independent media has the capacity to not only scrutinize government but also hold it accountable. This is based on the premise that good journalism leads to good government policies and programmes. But for the policies and programmes to be good, people must be engaged to contribute in making them. Moreover, for people to do this they must have access to information and ideas in an open and free environment. It is also indicative that for a democracy to answer its name it must embrace the spirit of free press in principle and practice. After all, democratic governance is not about provision of infrastructures or amenities alone but respect and promotion of people’s rights and freedoms. Moreover, worst tyrants who have been able to provide better critical infrastructural needs of their people, could not save themselves from the wrath of the people because of the regimes poor human rights records. The prevailing awakenings in parts of the world are a pointer in that direction.

Indeed, the FOIA presents journalists with the opportunity to proactively discharge their reporlerial duties and make follow ups to produce accurate and balance stories or analyses. This is based on the presumption that journalists would have access to public documents and information particularly on critical areas like; budget, development agenda and business deals among others. By obtaining accurate information journalists could offer democratic forum for social discourse and debate on government programmes and policies to make development goals people oriented. Similarly, the FOIA has the potential to improve journalists’ capacity to undertake civic and political education on matters relating to education, election, health, ethnicity, religion, etc. thereby facilitating the citizens ability to arrive at enlighten decision on crucial aspect of governance as it affect their lives individually or collectively. Sometimes such civic education could stimulate demands for action or in actions in the form of legislation, regulations, or guidelines on the conduct of officials or public lives. In other words empowered by FOIA, journalist could Serves as vanguard for agitation or advocacy. More importantly, the Act provides an opportunity for journalists to create an atmosphere that will ensure people assert their sovereignty as citizens.
Added to this also, the FOIA could be a veritable tool for journalists in discharging his surveillance duties on potential threats or dangers in the society. Thus, it enhances journalist’s capacity as a whistle blowers.

**Challenges of the media in implementing the FOI Act**

According to Malam Adamu S. Ladan, Station Manager, Freedom Radio, Dutse, Jigawa State, the passage of the Act has seriously challenged Nigeria’s journalists in discharging their duties as the fourth estate of the realm. It is therefore, instructive to note that even though we crossed lots of hurdles to reach where we are, the journey for the attainment of full freedom of the press has not ended. While it is one thing to ascent the Act into law, it is another to have it fully implemented. Journalists must cultivate the patience, resilience and courage in seeing that public officials embrace the Act in their dealings. This is more so as even in developed democracies it took country like the United Kingdom five years to implement its own legislation.

Agreed that journalist is now given the potent weapon to work, but the barometer to be used in judging his performance will be dependent upon his ability to meet individual’s rights as it relate to his job. Such rights include the individual’s right to know and to be given information that he may desires. It would however; amount to tragedy if the press assert its right and at the same infringed the right of its audience or readers by deliberately withholding or distorting information, or even spreading false hood. Journalist’s job is to unearth information, prepare and display it for the benefit of the audience or readers. To do this journalist must dig for facts beyond official information or releases as the FOI Act is assumed will satisfy. Discharging this role effectively could go along way informing public debates on important issues or questions.

Ladan also identified another challenge which the press should also look into; is the journalist’s right to impart the information he accessed. This is more so, as we record increasing incidences of extra judicial killings, intimidation, threats and other forms human rights violations on members of the profession with a view to silencing them. Similarly, the issue of ownership and control is another factor that determines individual’s access to the channels of communication, e.g. the number of broadcast stations or newspapers in circulation. In Nigeria for instance, despite the fact that ownership of broadcasting is liberalized, lots of constraints exclude many especially professionals from owning the medium. Some of these inhibitions include exorbitant license fees and other strenuous requirements that are difficult to fulfill. And the greater the impediments the more individuals are limited to having access to the channels. While in Nigeria for instance, broadcast stations are required to pay 2.5% of their annual income in addition to the payment of license fees renewable every five years; in Niger Republic it is the government that pays statutory subvention to such stations. I believe one could say without fear of contradiction that the level of consciousness in most cities in Nigeria now for instance cannot be compared to the one before the advent of independent broadcast stations. One could only imagine the degree of awareness if the process of ownership is further liberalized to the level that labour, trade groups and professionals among others are able to set up their mediums. Of significance also, is the penury condition of most people in the media industry. It is common knowledge that a number of journalists in the country particularly those working in the print media are owed several months salaries by their owners. This situation has remained unchanged despite concern shown by organised groups and the efforts of the NUJ in addressing the issue. This is partly due to unfavourable business climate which led most media organizations to operate under shoe-string budgets. Under this situation therefore, and considering the fact that using the FOIA to get information is costly and time consuming, few journalists or media organizations would have the patience, money and determination to pursue series of appeals,
requests and other huddles in prosecuting incidences of delays and denials of records by officials. Happenings at the Elections Petitions Tribunals in relations to how petitioners were often frustrated in getting access to certain election materials vital to diligent prosecution of their petitions said much as to the level of cooperation expected from the judiciary. The judiciary therefore must be mobilised to ensure greater access and protection where necessary. Furthermore, in spite of all the sensitization and mobilizations by stakeholders, there are still few incentives for workers to release information as many face severe penalties if they make public information tag to be sensitive. Judgement of the sensitivity of such information mostly rest with chief executives or senior officials of the organizations or departments who often are subject of the scrutiny. Now that the country is grappling with some security challenges, there is also another erroneous assumption that FOIA would compromised “national security” and hamper government agencies to make and implement policies by opening them and their officials to excessive public scrutiny. This could be seen from the standpoint of how officials have been handling press inquiries particularly as they relate to the prevailing insurgency. Most of the officials’ response are unsatisfactory and thus, do not lead to discovery of the truth. Another area which becomes a serious challenge to journalists is our restrictive prison policies. Journalists as evidence have shown hardly get access to records on either inmates or prison officials especially when probing rights violations.

(Mallam Adamu Ladan presented a paper on FOI Act at a Freedom of Information workshop organised by the Federal Ministry of Information in collaboration with the Office of the Attorney-General of the Federation and the Nigeria Union of Journalists (NUJ) held at the Nicon luxury hotel, Abuja on Tuesday 11th December, 2012.)

However, among other issues; there were fears in some quarters that the moment the law was passed that it could be abused, disregard by public servants or be amended later by the political class to protect some personal interests.

Few years after, the political class has surprisingly left the law intact but Nigerians who demanded it have tactically ignored it. According to a former Vice Chairman of the Lagos State chapter of the Nigerian Institute of Public Relations, Ms. Bolanle Olatunde-Bruce in a This day special feature on FOI Act, asserts that the failure of the media to work with the act has created a crisis in the polity.

“What we live with daily in Nigeria is simply half-truths, just because those who should feed us with the facts and figures have abandoned their duties. Having been in the media industry in the past I can’t imagine what such law would have helped us to achieve during my days in the newsroom. It is amazing these days when some cliques mischievously speak about corruption to score cheap political goals with little or no effort by journalists to put the record straight.”

Also worthy to note in one of the challenges of the FOI Act is the inability of Nigerians to know the detail of the Act. This has hampered its full implementation to a very large extent because it will be hard implement what you have little or no knowledge of.

**RECOMMENDATION /CONCLUSION**

Indeed, access to information is essential to the health and growth of democracy. First, it ensures that citizens make responsible, informed choices rather than acting out of ignorance or misinformation. Second, information ensures that elected representatives uphold their oaths of office and carry out the wishes of those who elected them. Thus, the FOI Act is expected to empower journalists to hold both government and private institutions accountable to the public in their functions. To this end, journalists have the task of pursuing the authorities in ensuring the reversal of orders surrounding certain classified documents.
Throwing the journalist's weight as professionals, behind the successful implementation of this Act will also translate to strengthening democracy. This is because, the right to access information gives practical meaning to the principles of participatory democracy. The right to information has a crucial role in ensuring that citizens are better informed about the people they are electing and their activities while in government. Democracy is enhanced when people meaningfully engage with their institutions of governance and roots their judgments on the basis of facts and evidence, rather than just empty promises and meaningless political slogans.

References