MEDIA & CIVIL SOCIETY HANDBOOK

For Using the Freedom of Information Act, 2011, at State and Local Government Levels in Nigeria
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Written by: Ridwan Sulaimon

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CHAPTER ONE
What is Freedom of Information (FOI)?

Meaning
Freedom of Information (FOI) is a fundamental human right established under international law. It is the right which every member of the public has to access information held by government officials and institutions of a particular country or community. The right is usually enjoyed by all members of the public, including citizens and non-citizens alike.

Rationale and underlying principles
The underlying principle behind FOI is the assumption that public institutions (and officials) hold information on behalf of the public and therefore, members of the public should be able to access the information anytime and in any manner they desire since it belongs to them (the public). This principle is well captured by Article IV(i) of the Declaration of Principles on Freedom of Expression in Africa which states that:

“Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.” (italics and emphasis ours)

This means that public institutions are like banks which keep other people's money, such that the money belongs to the people, not the bank; even though the money is in the custody of the bank, the people should be able to access it at any time and the bank must facilitate ease of such access. The public institutions are like the banks while the money in the bank is like the information held by public institutions – it belongs to the people and the public institutions are duty bound to facilitate access to the information. This is the idea or principle behind FOI.

Global status
The FOI is recognized by various international instruments of the UN and other regional bodies such as the AU, as a fundamental human right. It is internationally affirmed in Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In Africa, FOI, also called Right to Information (RTI) is entrenched in Article 9 of the African Charter on Human and People’s Rights, Article 19 of the African Charter on Democracy, Elections and Governance; Article 9 and 12(4) of the African Union Convention on Preventing and Combating Corruption; Article 10(3d) and 11(2i) of the African Youth Charter; Article 6 of the African Charter on Values and principles of Public Service Administration; and Article 3 of the African Statistics Charter, among others.

The First FOI law was enacted in Sweden in 1766, over 250 years ago. This was later followed by other nations like Finland in 1951 and the United States in 1966. As at 2019, 128 countries of the world have specific FOI laws including 22 African countries.
Indeed, the UNESCO adopted a resolution (38 C/70) on November 17, 2015, declaring September 28 of every year as International Day for Universal Access to Information (IDUAI). The UNESCO acknowledges that citizens’ access to information has particular relevance with the 2030 Development Agenda, and in particular with Sustainable Development Goal (SDG) 16.10 which calls for ensuring public access to information and protection of fundamental freedoms.

FOI laws are known by various name across the world, these include but not limited to: Right to Information (RTI) Act/Law, Access to Information (ATI) Act/Law, Right to Know Act/Law, Right of Access to Information Act/Law, Promotion of Access to Information Act/law, and Access to Documents Held by Public Authorities Act/Law, etc. Regardless of the name with which it is called, it is expected to serve the same purpose.
CHAPTER TWO

Introducing Nigeria's Freedom of Information Act, 2011

Background to the enactment
Following over a decade of tenacious advocacy by Civil Society Organisations (CSOs) from one regime to another, on May 28, 2011, President Goodluck Ebele Jonathan signed the Freedom of Information (FOI) Bill into law, bringing to a fruitful conclusion, the more than 11 years advocacy.

While announcing the signing of the bill into law, the then Deputy Director of Information in the office of the Special Adviser to President Jonathan on Media, Mr. Justus Abuah, disclosed in Abuja on May 31, 2011, that: “President Goodluck Jonathan has signed the Freedom of Information Bill, 2011 into law... the Bill which was passed by the outgoing National Assembly was conveyed to the Presidency on Friday, May 27, 2011. President Jonathan assented to it on Saturday, May 28”.

The Attorney General of the Federation (AGF) has the oversight responsibility to ensure the coordination of action and effective implementation of the Act. In accordance with its powers under the Act, the AGF has issued “Guidelines on Implementation of the Freedom of Information Act” which was revised in 2013.

Provisions of the Act and obligations of public institutions under the Act
This section will summarily highlight some of the key provisions of the Act and the obligations of public institutions, although this will be discussed further in other sections. However, this does not substitute for reading the Act. Anyone who is interested in using the FOI Act must also make efforts to read the Act as many times as possible. Thus, this is just an introduction. Some of the provisions of the Act are discussed below:

1. **Objectives of the Act:** The FOI Act sets out in its explanatory memorandum as well as in its preamble the purpose and objectives of the Law. These include: to make public records and information more freely available; to provide for public access to public records and information; to protect public records and information to the extent consistent with the public interest and the protection of personal privacy; to protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization; and to establish procedures for the achievement of these purposes.

2. **Right of access to information:** The Act strongly provides for every person a legally enforceable right of access to records, documents and information held by public institutions. It states that: “Notwithstanding anything contained in any other Act, law or regulation, the right of any person 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, is established” (Italics
ours). This means that the right applies to both natural and corporate persons and it is not subject to citizenship.

3. **Supremacy of the Act:** The FOI Act supersedes the provisions of all other Acts, Laws or regulations. In particular, it supersedes the Official Secrets Act, the Evidence Act, the Criminal Code, the Penal Code, Federal Public Service Rules, among others. These instruments cannot be used to limit the application of the FOI Act; and where any of them conflicts with the FOI Act, the FOI Act takes precedence.

   Indeed, “The fact that any information in the custody of a public institution is kept by that institution under security classification or is classified document within the meaning of the Official Secrets Act does not preclude it from being disclosed pursuant to an application for disclosure thereof under the provisions of this Act...”

4. **Reasons for requesting information:** Persons requesting information from public institutions under the act are not required to provide reasons or justify their need for the information being sought. The Act provides that: “An applicant under this Act needs not demonstrate any specific interest in the information being applied for.”

5. **Types of information accessible:** All kinds of information can be accessed from public institutions. These include records, documents and information stored in whatever form, including written, electronic, visual images, sound, audio recording, etc.

6. **Record keeping:** The Act requires every public institution to ensure the proper organization and maintenance of all information in its custody in a manner that facilitates public access to such information. Thus, according to the Act, public institutions have the obligation to ensure that it records and keeps information about all its activities, personnel, operations, businesses and other related information and records.

7. **Designation of information officer:** The Act requires every public institution to designate an officer, now known as “FOI Desk Officer,” to whom applications for information under the Act should be sent and to publish the title and address of the appropriate officer. The revised guidelines (mentioned earlier in this chapter) issued by the AGF require each public institution to designate a senior official of the Assistant Director level or its equivalent as the head of its FOI Unit with direct responsibility for the implementation of the Act. The AGF has compiled over a hundred list containing details of FOI desk officers of some institutions.

8. **Proactive disclosure:** The FOI Act requires all public institutions to proactively publish through various means and regularly update 16 categories of information even without anyone requesting for them. Some of these items are to be described or listed while some are to be disclosed in details. These categories of items include information about the functions of the organization, classes of records in possession of the organization, rules of the organization, policy documents, reports, financial
details, employment details of employees including salaries and allowances, minutes of meetings, contracts information and the details of the FOI desk officer.

9. **Illiterates and oral application:** The Act makes provision for illiterates (and perhaps, persons with disabilities in like manner). Thus the Act provides that an official to whom an applicant makes an oral application for information is required to reduce the application into writing; and that the official should also give a copy of the written application to the person who made the oral application.

10. **Timeframe for responses:** Public institutions covered by the Act must respond to applications for information within 7 days, whether or not they are granting access to the information requested.

    There are only 2 circumstances when the timeframe for response provided in the Act may be extended by a further period of no more than 7 more days. These are: where the application is for voluminous records and meeting the original time limit would disrupt the institution's operations; and where consultations are necessary to comply with the application and the consultations cannot be completed within the original time limit.

11. **Proper notification:** The FOI Act requires that where a public institution decides to deny an application for information, it must give a written notice to the applicant stating that access to all or part of the information will not be granted, with reasons for the denial and the section of the Act relied upon for the denial of access provided. The notice must also state that the applicant has a right to challenge the refusal in court. The notice must contain the names, designation and signature of each person responsible for the denial of access to information.

    More importantly, the Act requires that a public institution refusing an application for access to information must also indicate in the notice whether the information or record applied for actually exists. The wisdom behind this is that it helps the applicant to know and be able to decide whether to seek judicial redress for the refusal. Once it is clear that the information does not even exist, there is no point or need to challenge the refusal in court. The applicant may only decide to amend the request or source the information through other means. But if the applicant is informed that the information exist but the institution is refusing access to it based on an exemption clause, then the applicant may decide to seek judicial review.

12. **Fees for access to information:** Persons requesting for information under the Act are to pay for the standard charges for the duplication of documents and for transcription, where it is necessary to transcribe a record. No other form of fees can be charged under the FOI Act.

    The AGF has in the revised Guidelines on the Implementation of the FOI Act established a fee schedule for accessing information under the FOI Act. This is contained in the section: “Range of Fees Chargeable for Duplication of Records under the FOIA 2011” The cost of photocopying records or documents is a maximum of N10
per page. The cost of scanning and printing documents is a maximum of N10 per page. The cost of copying information to a CD, where the CD is provided by the public institution is a maximum of N100 per CD. The cost of copying information to USB drives, where the USB drive is provided by the public institution, is N1,500 for a USB of 1GB or less. The cost of copying information to USB drives of between 1GB and 2.5 GB is N2,500. The cost of copying information to USB drives of more than 2.5GB capacity is N5,000 per USB drive provided by the public institution. There is no charge for simply scanning a record and saving it to a file in a storage device, if you are not asking for hard copies.

The Guidelines further states that where the cost of copying or transcription is negligible or where it will cost the same or more to collect the fees than the amount being collected, the information may be provided to the applicant free.

13. Training of officials: Every public institution is required by the Act to ensure the provision of appropriate training for its officials on the public's right of access to information and for the effective implementation of the Act.

14. Annual implementation reports: Each public institution is required by the Act to submit to the AGF by Feb 1 of every year, a report on the usage of the Act covering the previous fiscal year. Each public institution must make the report available to the public by various means. The AGF has published eight of such reports from 2011 to 2018.

15. Access to annual reports: The Attorney-General of the Federation is also required to make each report, which has been submitted to him by every public institution, available to the public in hard copies, online and electronically.

16. Role of National Assembly: The Attorney General of the Federation is required by the Act to notify the relevant committees of the National Assembly not later than April of the year in which the report is issued, of the existence of the report and make it available to them in hard copies and electronically.

17. Protection for Whistle-blowers: The Act provides that no provision of the Criminal Code or the Official Secrets Act should be used against any public officer who, without authorization, discloses to any person, any information which he reasonably believes to expose fraud, violation of law, abuse or public danger, even if such information was not disclosed pursuant to the provisions of the Act. The Act also prohibits any civil or criminal proceedings against any person for receiving such information or for further sharing it.

Exempted information under the FOI Act
Certain categories of information are exempted from disclosure to members of the public under the Act given that the Act recognizes that some types of information held by public institutions may be sensitive for different reasons. Although, this does not simply means that information or records tagged as “Confidential” or “Top Secret” by public institutions are automatically exempted, rather, exempted information are explicitly specified in the FOI Act.
Exempted information under the Act include: information which may interfere with law enforcement investigations or be injurious to the security of penal institutions; information which may be injurious to the conduct of international affairs; Information which may be injurious to the defence of Nigeria; library circulation and other records identifying library users with specific materials; information which may undermine a person's right to fair trial or fair hearing in actual or reasonably contemplated proceedings before a court; personal information about the private lives of individuals, whether they are public officials or private citizens; information pertaining to test questions, scoring keys and other examination data used to administer an academic examination; trade secrets and commercial information obtained from a person or business that are proprietary, privileged or confidential; information subject to solicitor-client privilege; doctor-patient privilege; journalism confidentiality privileges and other professional privileges conferred by law; published material or material available for purchase by the public; and some library or museum materials.

**Public interest override**

It is important to note that the FOI Act was enacted in the interest of maximum disclosure. While an information may be exempted even under the FOI Act, it can still be disclosed under certain conditions. The Act provides in several sections that public institutions should disclose an exempted information if such disclosure is in public interest for instance to protect public health, public safety or the environment and if the public interest in such disclosure outweighs in importance any injury that the disclosure may cause to the government or any private person. The court may also order the disclosure of the information in public interest even if the public institution has denied it relying on exemption provisions.

**Which institutions does the FOI Act apply to?**

The FOI Act apply to all public institutions and government. These include traditional public institutions, some ordinarily private institutions, corporations and as well as governments. In three different sections, the FOI Act clearly and emphatically defines public institutions and government as follows (italics ours):

**Public institutions are:** “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 private companies utilizing public funds, providing public services or performing public functions”

**Government includes:** “any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any other arm of government, independent or regulatory government agency or public institution”

**Public Institution is:** “any legislative, executive, judicial, administrative or advisory body of the Government, including boards, bureaux, committees or commissions of the State, & any subsidiary body of those bodies, including but not limited to committees & sub-committees which are supported in whole or in part by public funds or which expend public funds, and
private bodies providing public services, performing public functions or utilizing public funds."

Therefore, the Act applies to any institution which uses public funds, however small, or performs public functions; it does not matter whether such institutions are owned by the government or by private individuals.

**Offences under the FOI Act and enforcing compliance**

The FOI Act provides judicial review as the only way to enforce compliance. Therefore it provides that an applicant who is refused access to information may within 30 days after he or she is refused or deemed to have been refused apply to a court to review the refusal. The court can extend the period of 30 days before or after its expiration.

The court has a wide discretion to examine any record or document. If the court decides that the information requested is not exempted, that the public interest in disclosing the information outweighs whatever injury the disclosure would cause, it can order the public institution to disclose the information to the applicant.

In any court proceedings, the burden of proving that the information was rightly refused rests on the institution concerned. The FOI Act provides that the courts should deal with cases arising under the Act using summary procedures to avoid delays. The Act also empowers people to compel the public institutions to comply with any provision of the Act even if the person has not made any request for information. So a person may, for instance, institute a court proceeding against a public institutions to comply with proactive disclosure obligations.

Where a public official or institution is found guilty, the Act creates two offences. The first is wrongful denial of access to information which attract a sanction of N500,000. The second is wilful destruction or falsification of records by an officer of a public institution before releasing the record to any person applying for it. The Act prescribes a minimum of one year imprisonment for the offence.
Kinds of Information that can be requested

Anybody can request for any kind of information under the FOI Act on any issue. While there may be exemptions to information that public institutions may release to the public, everybody still has a right to request for any kind of information and public institutions are bound by the Act to respond, even if they will not be granting the request. So, an applicant should not limit him/herself or self-impose some exemptions; even exempted information can be released due to public interest override.

Therefore, as long as the information is available and is in the custody of a public institution within the meaning of the FOI Act, the information is potentially accessible to the public. Thus the types of information which can be accessed under the FOI Act include: any records, document or information stored in whatever form, including written, electronic, visual images, audio recording or other sounds, etc.

Specifically, the following kinds of information can be requested:

- Paper records or written materials including (but not limited to) books, files, letters, papers, diaries, forms, labels, cards, notebook, or computer printouts, etc.
- Photographs and graphical outputs including maps, plans, drawings, x-rays, charts, graphs, images, artworks or sketches, etc.
- Audio recordings contained in, recorded or stored in any tape, CD, DVD, computer drives and servers, etc.
- Audio-visual records, including films, documentaries and similar materials contained in, recorded or stored in any tape, video, DVD, CD, computer drives and servers or any other system.
- Electronic records, including emails, text messages, audio-visuals or any other kind of information contained in, recorded or stored in any computer or internet-based storage system, server or database.

Institutions from which information can be requested

Any person can request for any information in any from any public institution or private institutions who fall within the FOI Act definition of public institution, provided that the information, record or document:

- Was prepared or created by the institution.
- Has been used by the institution.
- Has been received by the institution
- Is in possession or custody of the institution
- Is under the control of the institution.
Even if an applicant is not sure about any of the above conditions, the applicant may still proceed to apply to the institution if the applicant thinks that the institution may have the information. If the institution does not have the information, they are also bound by the Act to transfer the request to an institution which has the information or at least respond to the applicant that they do not have the information. However, applicants are advised to do their due diligence and be sure that they are applying to an institution which is relevant to their information request so as to avoid unnecessary delay in accessing the information.

Making FOI request

1. **Due diligence:** The first rule towards successfully accessing information under the FOI Act is to do basic diligence before applying for information. This include: getting familiar with the FOI Act, ascertaining which institutions are most likely to have the information you are requesting for, checking the institution's website or other sources to be sure that the information is not already in the public domain or if there are other details that need to go into your request, checking the AGF database if the institution has an FOI desk officer to which requests should be directed, ascertaining the appropriate title and address of the officer of the institution to which FOI requests should be directed, etc. These are important in the interest of the applicant as well as governance. This will help the applicant to avoid submitting requests with loopholes or requests that are inappropriately addressed and may not get the desired attention on time. This will also help the applicant to avoid wasting resources by applying for information that may have been in the public domain already. This will also help to reduce the cost of governance, unnecessary correspondence and save everyone's time.

2. **There is no fixed rule:** Neither the FOI Act nor the AGF guidelines specify the details that should be contained in an FOI request. There is also no specified guide whatsoever about how the FOI request should be structured. The guide provided in this section are only persuasive based on expert opinions and experiences of using the FOI Act.

3. **FOI requests should be approached formally:** Anyone making FOI requests should structure the request in the format that any official correspondence would follow and include any details that would ordinarily be contained in an official letter. These include addresses of the applicant and the addressee, contact details of the applicant, official salutation, title of letter, formal expression and language and formal closes.

4. **Details:** The content of the FOI request should be well detailed to enable the public institutions easily identify the document or information being requested and increase the chance of the applicant in being able to get appropriate response to the request. The applicant should include in the application any details that may make the information being requested easier to locate. This should include some or all of (but not limited to) the following: title of the document, date on which the document was recorded or issued, the reference or file number of the record, the name of the author, the extent of the details requested, the format in which the applicant wishes to receive the information, etc.
Example 1: “I hereby request under the Freedom of Information Act, 2011, a copy of the report of investigation into the cases of strange deaths in Kano State, submitted to the Ministry of Health by the Nigeria Centre for Disease Control on April 1, 2012 on the basis of which the Ministry announced in a press briefing on the same date that the death were as a result of COVID 19.”

Example 2: “I hereby request pursuant to the Freedom of Information Act, 2011, copies of all correspondence, both electronic and offline, exchanged between the Federal Ministry of Works and the China Civil Engineering Construction Company from June 5, 2018 to May 8, 2020, which led to the cancellation of the Lagos-Ibadan expressway contract between the Ministry and the Company.”

Example 3: “Pursuant to the Freedom of Information Act, 2011, I hereby request: 1. A list of HIV/AIDS drugs and vaccines manufactured by any French firm and which were certified by NAFDAC for trial and testing in Nigeria from January 1, 2002 to December 31, 2004. Kindly indicate whether the vaccine was manufactured completely by the French firm or in partnership with another firm; 2. Allied to item 1 above, kindly indicate the name of the French firm(s) and the name of any partner firm(s); 3. In addition to item 2 above, kindly indicate the name of the drug, the sample area where it was tested and the sample population on whom it was tested.”

5. **Explicitness**: The applicant should describe the information being applied for as clearly and as precisely as possible. The more specific the application is, the easier it will be for the public institution to find it and the more difficult it will be for the public institution to evade or deny the request. Therefore, while the FOI request should contain sufficient details, at the same time, it should be concisely written in simple language and straight to the point.

Applicants should be as specific as possible and avoid unnecessarily broad or verbose requests or expressions. Below is an example of a poor vague FOI request:

“I hereby request for all your records on Nigeria's 2011 elections.”

6. **Indicate the form of receipt**: An applicant should indicate the form in which he/she would like to receive the information. The applicant should indicate whether electronic or hard copies; or whether applicant simply wants to inspect the document; or whether the applicant wants to inspect the document first and then decide whether or not to take copies. As long as the request will not damage or distort the original record or information, the public institution is expected to comply.

7. **Emphasise Timeframe**: It is advisable that an applicant should emphasise that he/she expect a response within the seven days stipulated by the FOI Act or no later than 14 days as the case may be.

8. **Follow-up! Follow up!** An FOI requester should endeavour to follow-up by the realistic official means obtainable in the institution. If the institution has an FOI desk Officer, the requester should follow-up through the officer’s phone number and email address. Indeed, the AGF has also directed that each public institution must establish
a telephone line or Internet service that persons requesting information under the Act may use to inquire about the status of their requests. The AGF has also directed each public institution to assign a tracking number to each request and give the tracking number to the person making the request. Applicants should ensure to ask for and obtain a tracking number to follow-up the application.
Mr Abubakar Malami, SAN  
Honourable Attorney General of the Federation  
Federal Ministry of Justice  
Justice Headquarters  
Shehu Shagari Way  
Central Business District, Abuja  

Attention: Freedom of Information Officer  

Dear Sir,  

Request for Information Pursuant to the Freedom of Information (FOI) Act, 2011  
Pursuant to the FOI Act, 2011, I hereby request the following information:  

1. A list of all assets that have been permanently forfeited to, seized or confiscated by the Federal Government of Nigeria from May 29, 2015 to June 10, 2020. The list should be disaggregated to include and indicate: the country where each asset is domiciled, the detailed address of the asset, name of those from whom the assets were seized, forfeited or confiscated and the value of each asset.  

2. A list of all stolen funds that have been recovered by the Federal Government of Nigeria from May 29, 2015 to June 10, 2020. The list should be disaggregated to include and indicate: the currency of the funds, the name of persons from which the funds were recovered and the amount of each fund.  

I look forward to receiving the information promptly via the email address: info@gmail.com; and in any event, within 7 days of the receipt of this application, as required by the FOI Act, 2011.  

Should you require any clarification regarding this application, please do not hesitate to contact me either by phone on 0802323232455 or by the above-mentioned email.  

Thanks for your cooperation.  

Sincerely,  

Applicant’s Signature  
Applicant’s Name  
Applicant’s organisational title (if requesting on behalf of an organisation)
Sample Follow-up Letter

Date

Mr Abubakar Malami, SAN
Honourable Attorney General of the Federation
Federal Ministry of Justice
Justice Headquarters
Shehu Shagari Way
Central Business District, Abuja

Attention: Freedom of Information Officer

Dear Sir,

Follow-up on Request for Information Pursuant to the Freedom of Information (FOI) Act, 2011

I write to follow-up with my request for information pursuant to the FOI Act, 2011, dated June 15, 2020, wherein I requested the following information:

1. A list of all assets that have been permanently forfeited to, seized or confiscated by the Federal Government of Nigeria from May 29, 2015 to June 10, 2020. The list should be disaggregated to include and indicate: the country where each asset is domiciled, the detailed address of the asset, name of those from whom the assets were seized, forfeited or confiscated and the value of each asset.

2. A list of all stolen funds that have been recovered by the Federal Government of Nigeria from May 29, 2015 to June 10, 2020. The list should be disaggregated to include and indicate: the currency of the funds, the name of persons from which the funds were recovered and the amount of each fund.

As you may be aware, the seven days stipulated by the FOI Act for me to receive the information has elapsed. Therefore, as I stated in my initial letter, I look forward to receiving the information promptly via the email address: info@gmail.com.

Please do not hesitate to contact me either by phone on 0802323232455 or by the above-mentioned email for any further clarification.

Thanks as I look forward to receiving the information.

Sincerely,

Applicant's Signature
Applicant's Name
Applicant's organisational title (if requesting on behalf of an organisation)
The term Civil Society Organisations (CSOs) refer to organisations that are in the space between the state and the households, which are voluntary in nature and which are significantly independent of state influences. Therefore, Community-Based Organisations (CBOs), Non-Governmental Organisations (NGOs), Faith-Based Organisations (FBOs), welfare services etc are all CSOs. The CSOs are closer to the people and are therefore critical to enforcing compliance with the FOI Act at the state and LG levels. In order to ensure that the FOI Act justifies its essence and the people are able to effectively exercise their right of access to information at the state and grassroots levels, CSOs can employ any, some or all of the following strategies:

1. **Judicial activism:** This is also referred to as public interest litigation. This means to institute legal actions in the court of law in the interest of the public or a group of people whose rights or entitlement have been affected. CSOs can engage in judicial activism on behalf of grassroots people who have been denied access to information. CSOs can also institute public interest litigation to clarify any contention about the FOI Act. For instance, the issue of whether the FOI Act applies to state have been a subject of various public interest litigation by CSOs. This issue is at Appeal Court level now. While we await the Supreme Court judgement to finally lay the matter to rest, CSOs at the state and regional levels can still institute public interest litigation to compel state and local governments in the regions to comply with various provisions of the FOI Act, for instance, proactive disclosure or designation of FOI desk officers.

2. **Media campaign:** This remains a potent facilitator of effective implementation of the FOI Act at all levels. Government always want to have good stories told about them in the media. CSOs can issue press releases to expose violation of the FOI Act by public institutions or officials or highlight key implementation issues. CSOs can also partner with journalists to investigate public service delivery at the state and local government levels using the FOI Act. The findings of the investigative reports can serve as an advocacy tool for the organisations. Through partnership and press releases, CSOs can also use the media to put the issues of effective implementation the FOI Act as part of political campaign issues and manifestos talking point during elections periods; CSOs can use the opportunity to extract commitments from key stakeholders and political actors.

3. **Advocacy:** To effectively facilitate access to information at sub-regional levels in Nigeria, CSOs need to build strong networks and partnerships with key actors on the issues such as the National Human Rights Commission; the State Houses of Assembly and the Local Governments Legislative Councils. The CSOs can engage these actors and others that are strategically identified; they can be engaged through letters, advocacy visits and workshops to sensitize them about the need to implement the
FOI Act at their levels as well as the political gains that they stand to benefit from implementing a transparency framework like the FOI Act.

4. Community organizing: To effectively implement the FOI Act at sub-regional levels, CSOs need to mobilise communities’ stakeholders and sensitize them on their rights of ATI. Public institutions and political actors reckon with communities very often, rather than an organisation making requests on their behalf. More importantly, locally communities are often neglected in terms of service delivery. Therefore, CSOs can build the capacities of communities and support them to be able to use the FOI Act by themselves for themselves in order to facilitate effective service delivery to the communities.

5. Mass FOI requesting: One way to wake the public institutions up and alive to their duties is to make series of FOI request to them. While it is probably easy to ignore one or two FOI requests received in a month, it is rather indicting to attempt to ignore dozens of FOI requests received from different people weekly and monthly. CSOs can mobilise various non-state actors and also provide technical and financial support for people to make mass series of FOI requests to various local public institutions in their communities.

6. Mainstreaming FOI Act: While implementing the FOI Act at the sub-regional levels, it is important not to make it abstract. CSOs should look for other government initiatives into which they can key-in and mainstream the FOI Act. There are other initiatives that government can commit to and by so doing automatically commit to implementing the FOI Act; one of such initiative is the Open Government Partnership (OGP). CSOs can mobilise the state and local government to commit to this initiative and the likes. Access to information is one of the core pillars of the OGP. CSOs can initiate CSO-government partnerships at the sub-regional levels such as “Niger Delta Transparency Initiative,” “North Central Transparency Charter,” etc where FOI will be a core pillar of the initiatives and grassroots government will be made to commit to it.

7. Research and publication: In order to effectively track progress, it is important that CSOs engage in FOI research and publications. The publications can be policy briefs, implementation assessment, use cases etc, all of which will form important advocacy tools with which CSOs can engage the sub-regional governments to ensure effective implementation of the FOI Act.

8. Multiplying Effects of FOI Act: CSOs can help to ensure that the FOI Act is not treated as an abstract law. CSOs can help in ensuring that everyone including the people at the grassroots effectively reap the benefits of the Act. Activities geared towards this effect may include using the FOI Act to facilitate effective service delivery in the areas of health, education, agriculture, infrastructure, power, youth engagement, women empowerment etc. When CSOs ask the right questions through the FOI Act, it will help government to stay awake and alive to its duties and also help to keep transparency and accountability in check, improve service delivery and minimise opportunity for corruption.
The explosion of internet and digital technologies has expanded the scope of the enormous work of journalists. Thus, the act of journalism has become even more important in a digital age with the proliferation of inaccurate and outright fake news. Hence, journalists need to increasingly and undauntedly produce accurate and verified information to empower and inform the public, while maintaining credibility, social trust and timeliness.

Journalism is the action of collecting, assessing, verifying, analysing and reporting news and information. For the journalists to undertake this role, especially at the sub-regional levels where the people are often detached from the government, the role of the FOI Act becomes even more important.

Journalists play a core role in the dissemination of accurate and verifiable information to the public and their role is even more critical at the grassroots where there is limited access to modern information dissemination technologies. Very often, people rely on the little that radio and other traditional media can provide. Therefore, the journalists have a daunting task to provide as much information to the people at the grassroots as their counterparts in the city hubs.

Although journalists have various ways in which they access information at the state and local government levels prior to the FOI Act, however, the FOI Act further presents a lot of opportunity for the journalists to better do the work, particularly in terms of verifying information.

The FOI Act has eased many of the challenges hitherto faced by the journalists and constrains posed by secrecy laws such as the Official Secrets Acts which have been overridden by the Act. Therefore, journalists can access information from public officials and use the information in their reports without the giver or receiver of the information having to fear any consequence.

Renowned Indian journalist, Shyamal Yadav in his book, “Journalism Through RTI: Information Investigation Impact”, describes how journalists should persist in digging out information. His experience is relevant in the Nigerian context on how journalists can use the FOI Act at state and local government levels to facilitate both routine reporting and investigative reporting. The following 18 ways of using the FOI Act by journalists are extracts from Shyamal’s work which has been adapted to the Nigerian context.

1. **Conceptualize the idea:** Before applying for information under the FOI Act, as a journalist, you should first conceptualize the idea. It is redundant to use the FOI Act for information that is already available in the public domain. This can be achieved only if one is well informed and up to date. First, carefully go through all available means of information to get ideas. Information may be accessed through annual reports, budget, speeches, government documents and publications, websites of various departments, National Assembly or States Houses of Assembly debate, and interactions with sources in...
the relevant public institutions. Sometimes, FOI Act users file applications for information pertaining to minor, irrelevant topics. So before starting any FOI exercise, get an idea of its possible impact based on a broader public interest.

2. **Begin by getting available information without FOI:** Once the idea is conceptualized, it is important to first explore whether the information can be obtained without using FOI Act. The best thing about using the Internet is that we can explore all accessible information available in the public domain. Once one has accessed all available information, only then one should draft the FOI request to get information which is not available in the public domain. Before filing an FOI request, reading the FOI Act is important to help one understand how to proceed with an idea.

3. **Don’t question, just ask for information:** The FOI Act gives us the right to information and we can ask for any information which is available in any format. Just concentrate on getting that information and don’t present your request like an indictment or allegation. Also avoid unnecessary background.

4. **Be simple and clear in format and be aware of the loopholes:** While drafting the FOI request, keep the format simple and easy to comprehend. There is no need to provide any reason; just ask for that part of information you want from the concerned public institution. Also, be aware that the officers in charge of FOI requests have loads of excuses to throw your request in the bin. So, you should not give room for that excuse.

5. **Know the exemptions before you exercise the right:** The journalist should carefully go through and understand the exemptions contained in the FOI Act before exercising the right to information.

6. **Try all concerned public authorities for same information:** If the same information is available or likely to be available with multiple institutions, more than one institution can be approached. It often happens that one institution denies the information or ignore the request while another provides the same without any ifs and buts.

7. **Get ‘familiar’ with Junior Civil Servants:** Journalists should try to meet and discuss things with junior and middle level civil servants, but the relationship must be kept professional. Sometimes, it is easier to get information from them without having to apply for it under the FOI Act. There are several junior and mid-level officers in the government who are ready to share the information. Very often, the junior officers have a tendency of being at odds with their senior officers and the junior officers rarely have much at stake if any embarrassing information is released under the FOI Act; therefore, they are more likely to be willing to release information. Journalists should learn to utilize this conflict among government officials to explore and collect crucial information.

8. **Disinterestedness:** Journalists should not give the impression to a particular public institution or officer that they or their institutions will always be needed in the journalist’s FOI requesting or investigation. We must work with an approach of “No friendship with anybody, no enmity with anybody.” Therefore, the relationship should be cordial, yet professional. So, journalists should constantly network, visit new institutions,
build new allies and be in constant touch with them for ideas, because the truth is that stories are everywhere.

9. **Better to remain anonymous:** If you think an institution may not respond favourably if they know you are a journalist, avoid revealing identity. Sometimes, some public institutions, afraid that the information they are providing will be published in the media and will create an impact, hesitate in giving out information. The FOI Act gives the right to access information to everybody, so it is up to you whether you feel the need to disclose your identity or not and to file your application giving your office address or home address.

10. **Get ready for any response:** When you file an FOI request, you may be asked for extension of time, you may be denied outright or deemed to have been denied. Whatever the case, prepare your next step. This could be to complain to the oversight body such as the AGF or other bodies such as the National Human Rights Commission. You can also publish a story about the response in the media to put the institution on the spotlight. You may decide to review your request and file again to the institution or other relevant institution which may also have the information; or you may decide to proceed to the court of law for judicial review.

11. **Remember, a NO doesn't always mean NO:** When officers dealing with FOI requests respond in a negative way or do not provide the information, it does not necessarily mean that they do not want to provide the information. Sometimes, an informal, personal meeting with them does the trick. We should keep in mind that public officers work under several seniors and within some contexts; and the fact is that they respond on behalf of their institutions. Sometimes he/she is personally inclined to provide the information, but their seniors or contexts pressurize them not to. Quite often, when we meet them personally, they will tell how to deal with the hurdles and show the way to get the information. There are many instances where the information was denied or deemed to have been denied formally, but the same officers provided the same information later, informally.

12. **Don't waste time, file online or by post:** One does not need to go everywhere to submit the FOI request; the best way to save time is to do so online or send them through post offices. It does not cost much and saves valuable time; although not all institutions will have online protocols, but it is always a good idea to check for online means first. If online means is unavailable, then it may be a better idea to use postage service except where the public institution is close by.

13. **Be patient, be persistent:** As a journalist who needs to publish reports as soon as possible, during the tedious and boring process of taking the FOI Act route, one will often feel frustrated. But one must not lose patience because the type of story one can get using FOI request is usually not possible through other means of investigative reporting. So, once the story is finalized, published, and creates an impact, one will feel vindicated and elated. Sometimes such stories will be among the award-winning entries. So, keep persisting with efforts. Even without FOI Act, when a journalist explores some stories, often it needs much time and wasteful efforts, so what if that happens under FOI as well? So, a journalist must be prepared always for such efforts in search of a good story.
14. **Do extra work on information:** The information we access through FOI Act is hardly useful or adequate for stories in the form in which it is supplied. It depends entirely on the journalist what information he/she finally manage to unearth after repeated efforts and, more importantly, on how best the journalist utilize them in formulating the idea and writing the story. Very often, a journalist will need to prepare multiple drafts to give maturity to the idea and need to work several weeks or months to convert all the accessed information into a hard-hitting story. Although several FOI activists and NGOs supply and give access to information to journalists, only a few of them have an impact, since it is not processed and analysed in a proper and effective journalistic manner.

15. **Have sensitivity toward FOI Desk Officers:** While using the FOI Act, journalists must always be sensitive toward the person sitting across the table. One must be sensitive to the fact that he/she is not given any extra remuneration for supplying information; and in case of any blunder, he/she may have to face the consequences. Also, we should remember that these officials are employed on public money and they have to deal with FOI requests applications along with their other official duties.

While the government has enacted the FOI Act, it does not fill the vacant posts for FOI desk officers in the institutions, so the officers are loaded with work. So, as far as possible, we should avoid filing multiple requests in the same institution for the same information. And, we should not seek information which is already available in the public domain. Some of the officials who deal with FOI requests will provide the information without any hassle if they are convinced that the applicant has only the public interest in mind. Therefore, a journalist should try to win their trust and make them realize that he/she is just doing the job with the purpose of bringing about reforms in the system, nothing else.

16. **Building contacts through Inspection of documents:** Journalists should not just continue to file FOI requests for a particular information only. Rather they should be strategic. Journalists may decide to ask in their FOI requests to inspect the information first before deciding whether to take copies. With this, the journalist can easily penetrate any government office in order to develop contacts for further stories besides getting the particular information being requested.

17. **FOI Act at the State and Local Governments:** While it is equally challenging to get information from the Federal government through FOI requests, it is more challenging at the state and grassroots levels. Therefore, media organisations at the grassroots need to dedicate an FOI user in order to have a more concerted effort that will help in getting information from public institutions at the state level. Journalists must also build network and leverage each other’s contacts to get information from public institutions. The good thing is that, even if a journalist gets the information from the public institution through informal means, both the public officer and the journalists are protected by the FOI Act.

18. **Follow up!** It is important to for a journalist to follow-up with the FOI request. This has been discussed in details in chapter three of this handbook.
Apart from using the Act to access or verify information, journalists and the media generally can also use the Act at the sub-regional levels and promote its effective implementation in various ways including the following:

a. **Facilitating media compliance with Act:** It is important that government-owned media at the state and local government levels as well as private media utilising public fund or performing public functions equally see themselves as public institutions within the definition of the FOI Act and therefore ensure adequate compliance with the Act. Journalists have a duty to begin charity at home and ensure that their own organisations lead by examples in complying with the FOI Act especially in the area of proactive disclosure and responding to requests for information.

b. **Monitoring Implementation of the Act:** Journalists can also monitor and ensure effective implementation of the Act by carrying out analyses of the AGF implementation report, assessing the level of compliance through investigative reporting as well as continuously submitting requests for information and publishing their experiences with a view to highlighting institutions that are complying with the Act and those that are not.

c. **Enlightening the public about the Act:** This can be achieved through sustained radio and television debate about the Act; news analysis and commentary on radio and television about the implementation of the Act including success stories, use cases and challenges; serialised publication of the text of the law by newspapers and magazines; publishing of issues around the Act in newspapers’ editorials and feature articles; publishing of analysis about the Act and investigative reporting highlighting the role of the Act in the investigation.
1. Does the FOI Act apply to states and local governments?
The FOI Act, being a law that is legislated by the National Assembly applies to all public institutions. Although there has been arguments as to whether or not it applies to state public institutions and this has been used by unscrupulous state institutions to deny request for information.
However, the Appeal Court, Akure Division has held that the FOI Act applies to states, when it comes to issues of accountability and public interest. In a 34-page judgment, delivered on March 27, 2018 in an appeal filed against Ondo state government, the presiding Justice of a 3-member panel, Justice Uzo Ndukwe-Anyawu, said no state has the right to shun demands made under FOI Act.
Although, there is another Appeal Court judgement in Benin which held that the FOI Act does not apply to states, however, until a Supreme Court judgement finally lays the matter to rest, FOI activists and journalists must continue to operate on the assumption that the FOI Act applies to all public institutions including at the state and local government levels. This is the spirit and mind-set that can help to promote transparency, accountability and good governance at all levels.

2. Which is superior between the FOI Act and the Official secrets Act?
The FOI Act supersedes the provisions of all other Acts, Laws or regulations. In particular, it supersedes the Official Secrets Act, the Evidence Act, the Criminal Code, the Penal Code, the Federal Public Service Rules, Civil Service Oath of Secrecy, among others.
These instruments cannot be used to limit the applicability of the FOI Act; and where any of them conflicts with the FOI Act, the FOI Act takes precedence.
Indeed, “The fact that any information in the custody of a public institution is kept by that institution under security classification or is classified document within the meaning of the Official Secrets Act does not preclude it from being disclosed pursuant to an application for disclosure thereof under the provisions of this Act...”

3. Does the FOI Act protect Whistle-blowers?
Yes! The FOI Act protects whistle-blowers. The Act provides that no provision of the Criminal Code or the Official Secrets Act should be used against any public officer who, without authorization, discloses to any person, any information which he reasonably believes to expose fraud, violation of law, abuse or public danger, even if such information was not disclosed pursuant to the provisions of the Act. The Act also prohibits any civil or criminal proceedings against any person for receiving such information or for further sharing it.

4. Is the FOI Act limited by citizenship?
No. The Act is not limited by citizenship. The Act strongly provides for every person a legally enforceable right of access to records, documents and information held by public
institutions. It states that: “Notwithstanding anything contained in any other Act, law or regulation, the right of any person 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, is established” (Italics ours). This means that the right applies to both natural and corporate persons and it is not subject to citizenship.

5. **Should I give reasons for making my FOI request?**
No, you do not need to. Persons requesting information from public institutions under the act are not required to provide reasons or justify their need for the information being sought. The Act provides that: “An applicant under this Act needs not demonstrate any specific interest in the information being applied for.”

6. **Does the FOI Act applies to private institutions?**
It depends on some factors. The Act apply to: “...private companies utilizing public funds, providing public services or performing public functions”

7. **What if the information received through FOI request is falsified?**
It is an offence under the Act to falsify information. If an applicant can establish that an information provided through an FOI request is falsified by an officer of a public institution before releasing the record to any person applying for it, the applicant may charge the institution and officer to the Court of law. The Act prescribes a minimum of one year imprisonment for the offence if the officer is found guilty.

8. **If I do not get any response within seven days, should I automatically wait for 14 days?**
There is no need to wait for 14 days. If you did not get any response within seven days, you are deemed to have been refused access to information. You may choose to send a reminder to the institution or proceed to the Court of law to seek judicial review for the refusal.

9. **Can information tagged “Confidential” or “Top secret” etc be disclosed under the FOI Act?**
Yes! Indeed, the FOI Act provides that: “The fact that any information in the custody of a public institution is kept by that institution under security classification or is classified document within the meaning of the Official Secrets Act does not preclude it from being disclosed pursuant to an application for disclosure thereof under the provisions of this Act...”
ABOUT US
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**Contact Address:**
Policy Alert  
(Grassroots People Empowerment Foundation)  
12 Akpan Akpa Etuk Street  
Uyo, Akwa Ibom State  
Nigeria  
**Tel:** 2347033377786  
www.policyalert.org