

The Nigerian Freedom of Information (FOI) Act and the Right to Know: Bridging the Gap between Principle and Practice

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Abstract

Article 19 of the United Nations Universal Declaration on Human Rights adopted in 1948 declares that everyone has the right to freedom of opinion and expression. Laudable as the declaration is said to be, the media and citizens of many countries are yet to fully enjoy privileges provided by this law. It is also factual that even in countries where the FOI laws exist; different institutional setbacks seem to have stalled its effective application. This paper therefore set out to examine the extent to which the FOI Act, signed into law in Nigeria in 2011, has facilitated free access to public information as well as guaranteed the public's Right to Know. The survey research design was used to gather information from the respondents, who were mainly media practitioners and interview and questionnaire were used as instruments of data collection. Findings revealed that although the passage of the Freedom of Information Act was regarded as a welcome development, information seekers have not been able to fully utilise the law to their advantage to hold public officials accountable to the people. Such challenges as ignorance, denial of access to public information by public officers, executive immunity, exclusion of the private sectors and rigid legal procedures were some of the factors respondents said have impeded accessing public information through the instrumentality of the Freedom of Information Act. And these impediments have made the existence of the FOI Act more in principle than in practice. The researchers therefore recommend that, among other things, information seekers should strive to know their rights within the ambit of the law and public officials should be made to comply with Section 2 of the FOI Act, which mandates them to properly keep public records in a manner that facilitates public access to such records. Also, the law should be amended to cover access to information held by the private sectors.

Keywords: Right to know, FOI Law, Information Seekers, Public Officials

1. Introduction

Saturday, May 28, 2011 marked a significant milestone in the history of Nigeria journalism practice. On this day, the long awaited Freedom of Information Bill finally received a presidential assent and was christened *Freedom of Information Act, 2011: Law of the Federation of Nigeria*. From this day, Nigeria was admitted into the League of Nations which have successfully passed and signed the Freedom of Information (FOI) Act. The clamour and agitation for the passage of the FOI Act in Nigeria had been a lingering struggle by different Pressure Groups, Civil Society Organisations and the Nigerian Union of Journalists. Successive administrations, beginning from the military regime to democratic government, had paid deaf ears to these unrelenting clamour and agitation.

Nevertheless, on May 24, 2011, the FOI Bill was passed into Law by both chambers of the National Assembly and on the 28th day of May 2011; President Goodluck Ebele Jonathan appended his presidential signature to the bill to officially make it an Act. This presidential gesture received widespread commendation by many Nigerians; and by this Act, Nigeria automatically joined the League of Nations that are officially committed to guaranteeing press freedom. Records have shown that over 98 countries around the world have implemented some form of FOI legislation with Sweden's *Freedom of the Press Act* of 1766 as the oldest in the world (Mendel, 2008; Mohan, 2014).

The emergence of freedom of information legislation was in response to increasing dissatisfaction expressed against the secrecy surrounding government policy development and decision making. In Nigeria for instance, sections of such laws as the *Official Secret Act* and *Criminal Code* prohibit the disclosure of official secrets; and they stipulate penalty for any violation. For instance, Section 97 (1) of the Nigerian Criminal Code considers it a criminal offence for a public official to disclose any information in his or her possession. It states:

Any person who, being employed in the public service, publishes or communicates any fact which comes to his knowledge by virtue of his office, and which it is his duty to keep secret, or any document which comes to his possession by virtue of his office and which it is his duty to keep secret, except to some person to whom he is bound to publish or communicate it, is guilty of a misdemeanour, and is liable to imprisonment for two years (LFN, 1990).

It is obvious that such provisions are capable of limiting the right of the public to access information held by public official for public consumption.

Although, the Constitutions of most countries of the world guarantee individuals the right to hold and express opinion, but such provisions do not guarantee access to public information held by public institutions. For instance, Sections 22 and 39 of the 1999 Nigerian Constitution provide for Freedom of Expression and the

Press. Section 22 states that: “The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the Government to the people”. Section 39, which is closely related to Section 22, provides that: “Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.” Despite the existence of these laudable constitutional provisions, there was no existing law in Nigeria that guarantee free access to public information or record. There was, therefore, the dire need for the enactment of specific support legislations that will grant the right of access to public information, and the FOI Act was the answer.

However, for more than half a decade after the passage of the FOI Bill into Law, Nigerians are yet to witness the full impact of the legal document. Many media practitioners and scholars have expressed the concern that the law seems to exist more in principle or in theory than in practice as it had not really made any significant impact in the way people access public information; neither has it guaranteed freer press freedom in Nigeria. The questions in the lips of many concerned Nigerians are: Has the FOI Act in any way guaranteed freer access to public information? How has it promoted the public’s Right to Know? And how has it promoted the doctrine of press freedom in Nigeria?

Many information seekers have observed that there are still faced with difficulties trying to access public information through the machinery of the FOI Act. One of such hindrances is that most government ministries, agencies and parastatals are yet to comply with Section 2 (1) of the Act, which states that: “A public institution shall ensure that it records and keeps information about all its activities, operations and business.” However, due to poor record keeping attitude of some public officials, accessing public records has been made difficult. Specifically, sub-sections 2 – 4 mandate public institutions to publish public record in different accessible forms for the information seekers.

Another concern about the Nigerian FOI Act is that the law does not cover the private sector. That is, the law focuses only on public institutions to the exclusion of the private sector; thus, information held by the private sector cannot be accessed through legal means. Scores of public information seekers have argued that this omission has serious implications on the general information gathering and dissemination process, especially in this dispensation when the private sectors perform many functions which were previously in the domain of the public sector through contractual arrangements. The consequence of this is that information that was previously public is now within the private domain where functionaries are reluctant to disclose such information. Therefore, the major objectives of the study include: to examine how the Nigerian FOI Act has enhanced access to public records and information, investigate whether or not the FOI Act has enhanced press freedom in Nigeria, and examine some possible challenges associated with the application of the FOI Act in Nigeria with a view to recommending ways to surmount them.

2. Origin of the Nigerian FOI Act

The primary aim of the Freedom of Information Act was to guarantee press freedom as enshrined in the constitution – freedom to investigate, gather and report news without undue interference. It also makes access to public information easy. In Nigeria, the struggle for press freedom began from the colonial era in the early 190’s. It was reported that the British Colonial Government became very uncomfortable with tone and editorial content of indigenous Nigerian newspapers, which criticism they perceived to be anti-government. In a bid to subvert and checkmate this perceived excesses, the colonial administration promulgated the obnoxious Newspaper Ordinance of 1903, which was followed by Seditious Offences Ordinance of 1909 (Ayuba, Yahaya, Bulamu and Ibrahim, 2011, p. 79). All these laws were anti-press and kicked against the doctrine of press freedom.

This gesture, perhaps, stimulated a determined fight by indigenous journalists not only to gain press freedom, but also to rid the country from the domineering shackles of the colonial masters. As aptly observed by Ayuba, et al (2011, p. 79):

The Nigerian Press began to struggle for press freedom as rightly served that most of the press laws enacted in Nigeria from colonial time were obnoxious impositions by those in power to protect themselves from legitimate searchlight of a dutiful and patriotic press. Incidentally, the struggle for press freedom in Nigeria was tied to political independence.

Even with the attainment of political independence in 1960, there was no specific provision granting press freedom by the independence constitution; although, it made provision for freedom of expression. This was not enough to guarantee substantial press freedom. Therefore, the struggle continued. At this time, it became an exclusive clamour for the enactment of a specific law that will guarantee press freedom.

Given that the Colonial Power Lords have been sacked and a new government, mounted by Nigerians has been instituted, the press had the renewed vigour to push their demands through. Nevertheless, the zest was short-lived as a more despotic press intolerant and highly suppressive regime, called the military government, took over the governance of the country.

Notwithstanding, the struggle for the Nigerian FOI law continued in 1993 when three interest groups –

Media Rights Agenda (MRA), Civil Liberties Organization (CLO) and the Nigerian Union of Journalists started an open campaign for the enactment of the FOI Law (Omotayo, 2015, p. 4). The objective of the campaign was to establish the legal principle and right to access documents and information in the custody of the government or its officials and agencies as a requirement to the guarantee of freedom of expression. It was also aimed at creating mechanisms for the effective exercise of this right.

After due consultation with key stakeholders in media industry and legal expert in Nigeria and other parts of the world, Media Right Agenda produced a draft bill in 1994 titled: *Draft Access to Public Records and Official Information Act*. The content of the draft drew largely from the experiences of other countries operating freedom of information laws. This draft bill formed the basis for more discussion and debates majorly in workshops. One major consensus of the campaigners was the replacement of such legal regimes like the *Official Secrets Act* and the *Criminal Code* be replace, which prohibited access to public information, with one in which there is a general right of access to public records and information held by government agencies, ministries and parastatals. Arising from this consensus, Media Rights Agenda produced a revised draft of the proposed legislation known as the FOI Bill. Copies of the draft bill were sent to the Minister of information and to the Attorney-General of the Federation and Minister of Justice, but the political situation in the country at that time (military government) was not favourable to push the draft through.

However, the return to democracy in 1999 provided needed climate to revisit the matter. The concerned group continued the discussion for the promulgation Freedom of Information law in seminars and workshops. The draft law was further reviewed and the revised draft was presented to the 4th National Assembly for ratification. Finally, the bill was passed by the National Assembly and accented to by President Goodluck Jonathan on May 28, 2011. That was about twelve years after the bill was initially denied legislative and executive assent. Today, the clamour is over, agitations have ceased, tensions have been doused; and the bill has been signed into law. The question is: has the law truly guaranteed free access to information or press freedom in Nigeria? This is exactly what this study sought to address.

3. The Right to Know and the Freedom of Information Act

The Right to Know or individual's Rights to seek, receive and impart information is a constitutional or legal privilege to be enjoyed by citizens of any given nation. Like the Right Life and Dignity of Human person, the 'Right to Know' is a Fundamental Human Right. Emphasising on the importance of freedom of expression and the power of information, Article 19, a global campaign organisation for free press asserts that:

The Right to Information is an enabling and empowering right which has taken the world by storm over the past two decades, but it cannot be fully realised without the forth pillar of democracy: a free media. Without a free media, the information people receive is often incomplete, biased, unverifiable ... and largely ineffectual. Hand in hand with a free media, the Right to Information changes power dynamics, creating much more responsive and responsible states and governments (Article 19, 2010, p. 1).

This simply means that the mass media, which are regarded is the Fourth Estate of the Realm (Forth Pillar of Democracy), are the key guarantors of the citizen's right to information that are critical to national development. Basically, national development is measured by the standard of living of individuals in a given society. Information is said to be power, therefore, the quality of information the people are exposed to can go a long way to influence the quality of their lives.

In local, national and international charters and laws, the Right to Know is highly recognised as a fundamental human right. For instance, Article 19 of the United Nations' *Universal Declaration of Human Rights* guarantees the right to freedom of opinion and expression. The Article states in full 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 and regardless of frontiers." As a universal law, this declaration has a binding force on citizens of all countries of the world; and by extension, every country that is a member of the United Nations must subscribe to this declaration.

Similarly, the First Amendment to the United States Constitution as ratified on December 15, 1791, among other things, also provides from freedom of speech and of the press. It prohibits Congress from making any law prohibiting freedom of speech or of the press. In its preamble, the Amendment states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Hence, First Amendment guarantees citizens' right and the right of the press to express and to be exposed to a wide range of opinions and views; except when the content of such speech or expression is capable of inciting violence or obscene or infringes on the rights of others. Also, the Constitution of different countries of the world made freedom of expression a constitutional right.

All these laws and charters seek to guarantee freedom of speech and of the press, which clearly attests to the level of importance accorded individual and press freedom. One of such importance is that Freedom of

information guarantees individual's 'Right to Know', which is the right to hold opinions and to receive and impart ideas and information without interference. Freedom of Information laws is universal laws and Freedom of Information is a Universal Right meant to be enjoyed by citizens of all nations of the world. Speaking on the liberty of the press in 1959, John Stuart Mill, the British Philosopher and Economist made this famous statement:

The peculiar evil of silencing the expression of an opinion is that it is robbing the human race, posterity, as well as, the existing generation, those who dissent from the opinion even more than those who hold it. If the opinion is right, there are deprived of the opportunity of error for truth; if wrong, they lose what is almost as great as a benefit, the clearer perception and livelier impression of truth, produced by its collision with error (McQuail 2010, p. 169).

The idea expressed by Mill in this quotation is what later formed the basis of the notion of *self-righting*; that is, the idea that truth will always triumph over error. In a society where the Press is free to operate and given access to public information, it is difficult to cover up wrongdoing. In this case, press men and women are fully equipped to play their surveillance role and function as the watch dogs of the society.

Apart from exposing errors and wrongdoings, freedom of expression is also fundamental to the survival of democracy in the 21st century. This is the standpoint of Abdul Waheed Khan, Assistant Director-General for Communication and Information, UNESCO, as expressed in a publication by UNESCO (2008, p. 1). The statement reads:

The free flow of information and ideas lies at the heart of the very notion of democracy and is crucial to effective respect for human rights. In the absence of respect for the right to freedom of expression, which includes the right to seek, receive and impart information and ideas, it is not possible to exercise the right to vote, human rights abuses take place in secret, and there is no way to expose corrupt, inefficient government. Central to the guarantee in practice of a free flow of information and ideas is the principle that public bodies hold information not for themselves but on behalf of the public.

In other words, members of the public have the right to know how their representatives in government are discharging the mandate given to them. Such transparent governance can only be guaranteed by a statutory legislation that clearly spells out who can access what information, from whom and through what means. This is what the FOI law seeks to address. Freedom of information laws are expected to guarantee easy access to public records and information held by public institutions, which in the long run enhances press freedom

4. The Nigerian Freedom of Information Act

The Nigerian Freedom of Information Act, was signed into law on May 28, 2011 by Former President Goodluck Ebele Jonathan as a legislation that guarantee public access to records and information held in public dormain. The 32-section document also seeks to protect public records and information for the purpose of public interest and protect public officers from being punished or prosecuted for disclosing certain kinds of official information without authorization. In its preamble, the Act states succinctly –

An Act to make public records and information more 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 of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and; for related matters.

From the above statement, it is obvious that FOI Act nullifies the provision of such laws like the Official Secrets Act and the Criminal Code that legislate against unauthorised disclosure of public information. In fact, as a Law of the Federal Republic of Nigeria, the provisions of the Freedom of Information Act supersedes that of any existing law in regards to concealment and disclosure of public information in Nigeria. Section 1(1) of the Nigerian FOI Act (2011) clearly 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.

With the passage of the FOI Act in Nigeria by the National Assembly and the assent by the president, it is expected that the Nigerian FOI Act will foster freedom of the press, provide greater opportunity for investigative journalism and promote the good tenets of democracy like transparency and government's accountability to the people.

Further breakdown of the law indicates that Section one, Sub-section one (1) of the Act guarantees individual's the right to access public information. It states in part: "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...." According to Sub-section 2, the applicant needs not demonstrate any specific interest in the information being applied for. When a request is made but it is not granted, the applicant has the right to institute proceedings in the Court to compel any public institution to comply with the provisions of the Act.

Section 2, Sub-sections 1 and 2 of the Act mandates public institutions to keep proper records of all their

activities, operations and business; and make such information available in a manner that will facilitate easy public access. Sub-section 3 of Section 2 provides details about the kind of information that is expected to be kept by public officials and made available to an applicant on request.

Section 3 is on Request for access to public records and Section 4 gives public institutions seven days to make information requested for available to the applicant or when the institution considers that the application should be denied, it is expected to notify the applicant in writing stating reasons for the denial, and the section of the Act under which the denial is made. However, according to Section 6, the public institution may extend the time limit in respect of an application within seven days if it could not meet the original time limit for some obvious reasons. In the case of outright denial even where the records exist, the public institution to which the request is made is required to notify the applicant in writing stating reasons for the denial, the specific provision of the Act it relates to and that the applicant has the right to challenge the decision in Court. Where a case of wrongful denial is established, the defaulting officer or institution commits an offence under the law and is liable on conviction to a fine of N500, 000 (Section 7 [5]). Section 10 makes it a criminal offence, punishable on conviction by the Court with a minimum of one year imprisonment for any official or public institution to willfully destroy any records kept in his custody; or attempt to doctor or alter them before they are released to the applicant.

More so, Sections 11-19 prevent a public official from disclosing certain kinds of information on condition of National Security, except where public interest in disclosing the information outweighs whatever injury the disclosure would cause. The categories of information under exception, among others include: information relating to international affairs and defence, law enforcement and investigation, personal information about individuals, as well as disclosure of third party information and course or research materials. Also, Sections 20-25 provide that an applicant who has been denied access to public information can apply to the Court for a review within 30 days after the denial. The Court will then hear the case and pass its verdict.

Finally, Section 27 protects public officers from being punished or prosecuted for disclosing certain kinds of official information without authorization. Contrary to the provisions of some extant laws in Nigeria like the Criminal Code, Penal Code and the Official Secret Act, which make it an offence to disclose official information without authorization, the FOI Act immunises a public official from punishment or prosecution for disclosing such information meant for the interest of the general public. By implication, the provision of the FOI Law supersedes the provisions of any other existing laws in Nigeria in regards to concealment or disclosure of public information.

From the foregoing, it is very obvious that the FOI Law made adequate provisions on how to access public information, which is very significant to press freedom. In fact, the principle of Freedom of Information is predicated on the two pillars of press freedom and the public's right to know. In other words, public interest is considered more paramount to individual or group's interest; and it is the responsibility of the press or media practitioners to uphold such right through truthful, transparent and objective reportage. Therefore, with the provision of the FOI Act, it is hoped that the Nigerian journalists will be able to discharge their responsibilities as the watchdogs of the society as well as do more of investigative journalism. Also with the new law, "Nigerians finally have vital tools to uncover corruption, and hold officials and institutions accountable. The new law will profoundly change how government works in Nigeria" (Anyanwu, Akanwa and Ossai-Onah 2013, p. 6).

In other words, the objectives of the FOI Act are very laudable. But this is in principle. How these principles will translate to practical application has a thing of great concern to many Nigerians. There are reported cases whereby information seekers have been faced with difficulties trying to access public information through the machinery of the FOI Act. Such hindrances range from poor record keeping habit of public officials and negative attitude to public information disclosure. Others reported hindrances include: undue secrecy covering civil service operations, delay in adjudication of justice by the Nigerian Courts, immunity clause enjoyed by selected members of the executive, which immune them from being summoned by any Courts of the land. In some instances, some public official have been accused of hiding under some sections of the law to conceal information which they term 'classified'.

A typical case was the secrecy, or better still, the mysteries that surrounded the disclosure of President Muhammadu Buhari's health status or the medical bills for the President's 49 days medical vacation in London, United Kingdom. The President had embarked on ten days medical vacation to London in January, 2017; and later requested for an extension through writing to the National Assembly, which lasted till March 10, 2017. While in London, and even after President's return, and the Nigeria citizens, particularly the mass media made a stern request that the presidential aides should disclose the president's medical bills and health status to Nigeria as a mark of accountability and transparency. Their demands were premised on provisions of the FOI Act. The argued that since the president was a public official and his medical expenses was from the public purse, it just normal for him to disclose such useful information about his state of health.

Contrary to the expectation of Nigerian people, the presidency declined to heed the request and went ahead to defend their stance also using sections of the FOI Act. The presidency spoke through its Minister of Information and Culture, Alhaji Lai Mohammed stating that the FOI Act exclude issues bordering on National

Security; and so the request for the disclosure of the President's medical bills should be considered on the basis of 'national security and morals'. The statement appeared on pages of major National Dailies on Wednesday, March 30, 2017. Mr. Mohammed was referring specifically to Section 11(1) of the 2011 FOI Act, which states that: "A public institution may deny an application for any information the disclosure of which may be injurious to the conduct of international Affair and the defense of the Federal Republic of Nigeria." In other words, Mohammed termed documents and records bordering on the president's health 'classified documents', and disclosing such information was tantamount to contravening sections of the FOI Act. But Sub-Section two of Section 11 provides a caveat. It states: "Notwithstanding subsection (1), an application for information shall not be denied where the public interest in disclosing the information outweighs whatever injury that disclosure would cause" (Section 11(2) of the FOI Act).

Even though, Lawyers and Civil Society Organisations (CSOs) evidently faulted the position of the presidential aides that the president's medical bills was a 'classified' document, the presidency maintained their stance and declined to the bidding of Nigerians. The legal practitioners and Civil Society Groups maintained that there was nothing classified about the health status of the President or any other public officer; and that non-disclosure of such information was encouraging corruption, which the president was renowned for fighting against.

This clearly became a case of dilemma in the interpretation of the law. In a situation like this, what should the information seekers do? The law also made it abundantly clear – approach the court for an interpretation or to seek redress (Section 20). So, the law cannot be said to be self contradictory. It behooves on information seekers to be well knowledgeable about all the provisions of law and judiciously use them for the interest of the public.

5. Theoretical Framework

This study was anchored on two theories – the Libertarian or Free Press Theory and the Social Responsibility Media Theory. Used together, the two theories emphasises the need the freedom comes with responsibility. The FOI Law guarantees press men and women the legal rights to discharge their constitutional responsibilities to the society unhindered. They are expected to pursue this obligation to the utmost, but within the ambit of the law and utmost sense of responsibility to the society, particularly to the common Nigerians.

5.1 *Libertarian (Free Press) theory*

The libertarian theory was popularized by F. S. Siebert, T. B. Peterson and Wilbur Schramm in 1963. According to Baran & Davis (2000, p. 90), libertarianism is "a normative theory that sees people as good and rational; and able to judge good ideas from bad." Baran and Davis (2000, p. 91) further avers that the principle of libertarianism is in line with John Milton's idea of self-righting, which asserts that in a fair debate, good and truthful arguments will always win out over lies and deceit. The libertarian theory arose in opposition to the authoritarian theory. In its most basic form, the libertarian theory prescribes that an individual should be free to publish what he or she likes; and to hold and express opinions freely. It also advocates that the press should be seen as partners with government in the search for truth rather than a tool in the hands of the government (Folarin, 2002, p. 30). Citing Darmola (2003), Anaeto, Onabanjo, and Osofiso (2008, p. 55) summarise the basic assumptions of the theory as follow:

- Publication should be free from prior censorship
- No restriction should be placed on the collection of information for publication provided it is done by legal means
- Journalists should be allowed to claim a reasonable degree of autonomy in their work place

In a nutshell, the major concern of the libertarian or free press theory is to guarantee free access to information by the press and to allow for press freedom. The upshot of the libertarian theory is the Freedom of information Act, which serves as a legal document to facilitate access to public information held by public institutions. The FOI Law removes all forms of restrictions placed against the freedom to access information held in public domain provided such moves are intended to satisfy public interest.

5.2 *Social Responsibility Media Theory*

The Social Responsibility theory owes its origin to the Hutchins commission on Freedom of the press set up in the United States in 1942 in response to widespread criticism of the American newspapers. The commission was set up by Publisher Henry Luce and headed by Robert Hutchins. The aim of the commission was to examine areas and circumstances under which the press in the United States, particularly, is succeeding or failing to discover where freedom of expression is or is not limited. The commission released a major report of its findings in 1947 and the report coined the notion of the Social. As an upshot of the libertarian theory, the theory cautions the press that: "freedom carries obligations and the press, which enjoys a privileged position under government, is obliged to be responsible to society for carrying out its essential functions" (Anaeto, et al 2008, p. 57).

More so, McQuail (2010, p. 170) states that the major propositions of the theory include: the media have

obligation to society, and media ownership is public trust, news media should be truthful, accurate, fair, objective and relevant; and the media should be free but self-regulated. Others include: the media should follow agreed codes of ethics and professional conducts and government may need to intervene, under some circumstances, to safeguard the public interest.

The theory also serves as a criterion for measuring and checkmating the excesses of media practitioners, which may have arisen as a result of excessive freedom. Therefore, as much as it is imperative for media practitioners to operate under a free atmosphere devoid of undue regulatory and administrative interference as guaranteed by the constitution and the FOI Act (as is the case in Nigeria), media practitioners must carry out their duties with all sense of responsibility.

6. Methodology

The survey research methodology was employed to gather data for the study. Two research instruments were utilised – the interview method and the questionnaire. Only media practitioners were served with the research instrument. This is due to the technicality of the subject matter; as it required a high display of professional competence in responding to the questions contained in the research instruments. The media practitioners were further divided into two groups based on the two research instruments used. While the interview method, was applied to heads of Media Organisations and veterans in the media professional bodies like the Nigerian Union of Journalist (NUJ); the questionnaires, were administered to other practicing journalists – reporters, in both print and electronic media houses within the Calabar Metropolis.

All the major media outlets or houses in Calabar were used for the study. They include: NTA, Calabar, the Cross River Broadcasting Corporation, Calabar (Radio and Television), Canaan City and *Chronicle* (the state’s newspaper corporation). Apart from these, Reporters from other Newspapers and Broadcast media, who work in Calabar as Correspondents were also included in the survey. These correspondents represent media establishments such as the Sun, Punch and Vanguard Newspapers; as well as, African Independent Television (AIT) and Channels Television.

A total of 100 questionnaires were designed and 92 copies were handed out to the respondents. However, the researcher was able to retrieve 80 copies. The questionnaire was made up of twelve (12) items, containing both closed and open-ended questions, based on Journalists’ knowledge of the existence and use of the FOI Act and the extent to which the FOI Act has enhanced their access to public information and enabled them operate freely undue interference. Data analysis was done based on the retrieved copies of the questionnaires and the data gathered through the interview method.

7. Data Analysis, Discussion and Findings

This study set out to examine the level of effectiveness of the FOI Act against the backdrop of how the law has enhanced public access to information in custody of public institutions. Analysis and discussion were based on the data collected through interview and questionnaire instruments. Out of the 92 questionnaires handed out to journalists, eighty (80) copies were completed and returned. Section 4.1 deals with analysis of the data collected through the questionnaire

7.1 Data Presentation and Analysis

Table 4.1: Distribution Based on Media Organisation

S/N	Media Organisation	Frequency	Percentage
1	Nigerian Chronicle	19	23.8
2	Cross River Broadcasting Corporation	22	27.5
3	NTA, Calabar	16	20.0
4	Canaan City FM	9	11.3
5	The Sun	3	3.8
6	Tribune	1	1.3
8	News Agency of Nigeria	4	5.0
9	Vanguard	2	2.5
10	Punch	2	2.5
11	AIT TV	1	1.3
12	Channels TV	1	1.3
	Total	80	100

Table 4.1 displays the frequency of the respondents based on the media organizations they represent. Top in the list was CRBC with 22 (27.5%) journalists responding to the items in the questionnaire.

Table 4.2: Awareness and use of the FOI Act to Access Public Information

ITEM	Frequency	
	Yes	No
Awareness of the existence of FOI Act in Nigeria	80 (100%)	0 (0%)
Use of the FOI Act to access information	62 (77.5%)	18 (22.5%)

In Table 4.2, all the eighty respondents affirmed that they are aware of the existence of the FOI Act. Out of this number, only 62 (77.5%) respondents said they have used the Act to access information. The remaining eighteen (22.5%) said they have not used it.

Table 4.3: Accessing Public Information through the FOI Act

Item	Frequency	Percentage
Yes	38	47.5
No	20	25
Indifferent	22	27.5
Total	80	100

Table 4.3 shows that 39 respondents, representing 47.5 percent, aver that the FOI Act has greatly enhanced the right to freely access public information. Twenty respondents disagreed and twenty-two of them were indifferent.

Table 4.4: The FOI Act and Press Freedom in Nigeria

Item	Frequency	Percentage
Yes	54	67.5
No	26	32.5
Total	80	100

In Table 4.4 above, 54 (67.5) respondents agree that the FOI Act has Enhanced Press Freedom in Nigeria. Twenty-six of them said 'NO'.

Table 4.5: Level of Press Freedom Operating in Nigeria

Item	Frequency	Percentage
Free	10	12.5
Partly Free	56	70
Not Free	14	17.5
Total	80	100

Data presented in Table 4.5 shows the level of Press Freedom Operating in Nigeria. Ten respondents, representing 12.5 percent, asserted that there is press freedom in Nigeria. Fifty-three of them, representing 70 percent stated that the Nigerian press is partly free; while fourteen said there is no press freedom in Nigeria.

7.2 Discussion and Findings

To discuss the result of this scholarly inquiry, the researchers matched the replies of the respondents' replies to the questionnaire and interview instruments to proffer answers to the three research questions set in Section 1.2 to guide data collection for the study.

Research Question One

To what extent has the Nigerian FOI Act guaranteed freer access to public records and information held by public institutions?

In an attempt to answer this question, the respondents were asked if they had used the FOI law as a means to access public information since its existence in Nigeria. Majority of them responded in the affirmative. Only a few said they haven't. The data as presented in table 4.2 indicated that 62 (77.5%) said YES; while 18 (22.5%) said 'NO'. On whether the Act has enhanced freer access to public records, the interviewees and the respondents were unanimous in their response. They asserted that it is very difficult to access what is not made available. By this they implied that public officials have not been able to comply with the Section two (2) of the Act which provides that all public records should be made available (published) in different forms in order to enhance easy access. According to them, the lukewarm attitude of public officials toward the provisions of the FOI Act, among other factors, had negated the right to freely access public information in Nigeria. One of the respondents put it this way:

I salute the passage of the bill and it can guarantee the right to know as it spelt out clearly ways to access information from public officials and the procedures to approach the court when such access are denied. But I can authoritatively say that it is still difficult to get information from public offices as the civil servant we have these days still believe in this their official secrecy Act. Even when you demand for such information, they will tell you that they don't have the right to disclose such information ... I have written severally to access information mostly from government Ministries, Departments and Agencies but the above peculiar hindrances held sway.

They also stated that they didn't bother to approach the court because of the protracted nature of court proceedings in Nigeria. In other words, accessing information through the FOI Act is made more difficult because rigid processes involved – the law is not flexible. However, one of the interviewees seemed to provide a solution to the seeming legal hurdles: “The FOI Act is supposed to operate on the strength of the law. There are some hurdles that tend to hinder its effective operations, but if the people know their rights as provided by the law, they will overcome these hurdles.” Generally, respondents blamed the inability of Nigerians to fully maximize the potentials provided by the FOI Act on ignorance, lack of knowledge of the provisions of the laws of the land, general lukewarm attitude of Nigerians to fight for their rights and general ‘systemic failure in Nigeria’.

Research Question Two

In what ways has the FOI Act enhanced press freedom in Nigeria?

Majority of the respondents, numbering over sixty percent, responded in the affirmative (see Table 4.4). The interviewees spoke highly of the Act. One of them spoke in this manner: “Nigeria enjoys one of the freest press practices in the world. As a journalist, I can attest to this. If you read pages of the newspapers or listen to news, you will be surprised at what journalists write, but they go scot-free.”

However, a good percentage of the respondents to the questionnaire, numbering seventy percent, indicated that Nigeria still operates *Partial Press Freedom*. This position is in line with the 2016 World's Press Freedom Report, which placed Nigeria on 17th position as the freest country in Sub-Saharan and 106th position in the world. The respondents were of the opinion that even though the Nigerian press is not closely guarded by the democratic government of the day or its agencies, total press freedom remains a mirage in Nigeria. They blamed this on factors such as lack of access to public information, poor record keeping, institutional corruption, undue influence by media owners and lack of professionalism as being responsible to Nigeria's poor rating among the press freest countries in the world. Commenting particularly on poor access to public information in the possession of public officials, one of the interviewees said: “Lack of access to facts or information made Nigeria to be rated low in the international rating on press freedom. What most journalists do is speculative writing since they are denied access to authentic facts.” This can be very inimical to national development and national security. Speculative reporting thrives on falsehood and outright deception.

Most times, such reports are capable of instigating unwarranted unrest in the society. Therefore, in order to address the problems of speculative reporting and encourage the practice of investigative journalism in Nigeria, access to public information should not be denied in any form. In line with the Libertarian or Free Press theory, individual should be free to access, hold and express opinions freely. It also advocates that the press should be seen as partners with government in the search for truth rather than a tool in the hands of the government or powerful individuals to serve selfish interests. Also in line with the Social Responsibility Media Theory, the press is expected to behave in a responsible manner. A culture of speculative writing for instance can be seen as an act of irresponsibility. While clamouring for freedom to operate, press men and women must be able to uphold the culture of truthfulness, accuracy, fairness and objectivity in their reportage.

Research Question Three

What possible challenges are associated with the application of the FOI Act in Nigeria and how can they be overcome?

The respondents enumerated quite a number of issues, but a few of them were outstanding. These include: immunity clause enjoyed by presidents, governors and some selected officials, exclusion of private sectors (the bill does not cover the private sectors), poor record keeping culture by public officials, ignorance and lack of public awareness, delay in adjudication of justice, as well as undue secrecy covering civil service operations. Talking about the immunity clause, the respondents said the constitution immunizes some public officials from court actions while their tenures subsist. According to the respondents, such officials sometimes hide under the cloak of the immunity clause to conceal important public information since they cannot be summoned before any court of competent jurisdiction. A particular respondent gave an instance of how he was denied some classified information by top government official under the guise that they do not have the right to disclose such information. Invariably, only the governor can disclose such information. And if the governor refuses to give approval for such information to be released, it then becomes very difficult to institute a court process due to the immunity he enjoys.

In the same vein, the exclusion of the private sector by the Act was another serious concern expressed by the respondents. According to them, the private sectors are the greatest employers of labour in Nigeria and most of the companies handle key government contracts. Excluding the private sector therefore is tantamount to devising a way to hide key public records or denying the public full access to public information, they said. They therefore called for a review of the Act to incorporate the private sectors. On a general note, the respondents were of the opinion that proper application of the FOI Act will guarantee press freedom and freer access to public information, which will in return enhance good governance and good democratic practice in Nigeria.

8. Conclusion

The study set out to investigate the level of utilisation of the Nigerian FOI Act by information seekers to access public information. Particularly emphasis was given to ascertaining if the FOI Law has guaranteed freer access to public records; and by extension, promoting press freedom. Suffice to mention that press freedom is very indispensable to the progress of democracy the world over. There can be no true democracy without an independent Press. Citing Thomas Jefferson, Former President of the United States of America, Akinfeleye (2008, p. 58) states that:

Since the basis of democracy was opinion of the people, the very first objective is to keep that...if it were left for me to decide whether we should have a government without the mass media or the mass media without a government, I should not hesitate a moment to choose the later.

The above statement attests to the importance of the Press in the entrenchment and development of democracy the world over. When the media are allowed free access to public information, it becomes very easy for instance to expose corrupt public officials and make the government accountable to the people. This thinking partly formed the basis of enquiry in the paper. The paper particularly examined the level of access to public information vis-a-vis the level of press freedom guaranteed by the Freedom of Information Act, which came into existence in May, 2011 in order to Nigeria to bridge the gap between mere existence and actual practice of the Law.

Findings revealed that although the passage of the Freedom of Information Act was a welcome development, information seekers have not been able to take full advantage law to hold public officials accountable to the people. Such challenges as ignorance, denial of access to public information by public officers, executive immunity, exclusion of the private sectors and rigid legal procedures were some of the factors respondents said have impeded accessing public information through the instrumentality of the Freedom of Information Act. And these impediments have made the existence of the FOI Act more in principle than in practice. It is high time Nigerian journalist revert to the era of investigative journalism in order to be able to uncover corrupt practices and unearth negative official secrets in the interest of the Nigerian people. With the Freedom of Information Act in place, the work of the investigative journalist has become less demanding; only if he or she can make adequate use of its provisions of the Act.

9. Recommendation

Based on the findings of the study, the researcher recommends that:

1. Wider publicity and sensitization should be accorded the FOI Act by the media, Civil Right Group and respective organs of the government in order to educate the general public on their right to access public information through the provisions of the Act.
2. All relevant public officials should be made to comply with Section two (2) of the Act, which mandates them to make all relevant records in their possession available in accessible forms.
3. The law should be amended to cover information held by the private sectors, which most times handle government or public projects or contracts.
4. Lastly, specific legal modalities should be put in place to enhance quick dispensation of justice for cases relating to accessing information through the FOI Law. The current habitual delay of justice by the Nigerian legal system does not favour the process seeking legal redress in case of denial of public information. Such unconventional judicial arrangement like mobile or temporal court, which enhance quick dispensation of justice, will serve better.

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