

An Appraisal of the Freedom of Information Act (FoIA) in Nigeria

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Abstract

This study appraises the Freedom of Information Act in Nigeria. The study made use of qualitative research method. The researcher consulted secondary sources such as books, journals, and magazines for the collection of data. The study reveals that in Nigeria, Freedom of Information Act contains more exemption sections and clauses than sections that grant access to information. This means that some mischievous public officers can use these sections for unjust and mischievous purposes. Another fundamental issue that affects The Freedom of Information Act is some other media laws that are still fully operational in Nigeria. For example, we have the Official Secrets Act, Evidence Act, the Public Complaints Commission Act, the Statistics Act, and the Criminal Code; all aimed at suppressing the free flow of information. The study recommends that the workability of the law in Nigeria remains a concern. Allaying this concern will be highly predicated on how well strict compliance is made to the relevant provisions of the law. Some of the anti-press laws that adorn or law book should either be expunged or repelled. It is in that, that the FoIA can be beneficial to the Nigerian nation and its citizens alike.

Key words: Freedom of information act; Access to information; Appraisal; Media laws; Nigeria

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INTRODUCTION

Freedom of information, specifically access to information held by public authorities is a fundamental element of the right to freedom of expression and vital to the proper functioning of a democracy. It is an act that makes provision for the disclosure of information held by public authorities or by persons providing services for them (Robert, 2000). This means that the act enables one sees a wide range of public information because it gives the right to ask any public body for all the information they have on any subject. According to the Media Rights Agenda (2011) this Act makes 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 for disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and; for related matters.

In a country where Freedom of Information Act is in operation, anyone can make a request for information—there are no restrictions on your age, nationality, or where you live. You can ask for any information at all, but some information might be withheld to protect various interests which are allowed for by the Act. If this is the case, the public authority must tell you why they have withheld such information. According to Bard (2001), unless there is good reason, the organization must provide the information within seven (7) working days.

1. CHALLENGES OF FREEDOM OF INFORMATION ACT IN NIGERIA

There are always limitations as to what can be accessed in the operation of Freedom of Information, even in developed countries where Freedom of Information Act

has been in practice for long. In Nigeria, the Freedom of Information Act, according to Ogbuokiri (2011), contains more exemption sections and clauses than sections that grant access to information. This means that some mischievous public officers can use these sections for unjust and mischievous purposes. For instance, Ogbuokiri submits that only Sections 1 and 3 grant access to information; but as many as ten sections (Sections 7, 11, 12, 14, 15, 16, 17, 18, 19 and 26) are meant to deny the public access to information.

However, the omnibus proviso against denial of information that says “where the interest of the public would be better served by having such record being made available, this exemption to disclosure shall not apply” is commendable, with the expectation that the Judiciary would interpret the proviso liberally for the public good.

Another fundamental issue that affects The Freedom of Information Act is some other laws that are still fully operational in Nigeria. For example, we have the Official Secrets Act, Evidence Act, the Public Complaints Commission Act, the Statistics Act and the Criminal Code; all aimed at suppressing the free flow of information. All these laws affect the effectiveness of the Act in the long run as some mischievous public officers can use these aspects of the Acts for their selfish purposes just like what happened in the United Kingdom Parliament in 2009. Members of the UK Parliament (MPs) had misused the permitted allowances and also claimed some unlawful expenses; members now bank on Freedom of Information Legislation to prevent disclosure of the atrocity. Though the Freedom of Information Legislation was eventually negated (because of some sections in their Freedom of Information status that nullified the freedom of Information Legislation) and the issue subsequently published by The Telegraph Group in 2009, it would have been a different thing if it was in Nigeria.

There are other challenges of complying with the *Freedom of Information Act*. Some of these include the poor culture of record keeping/maintenance and retrieval, the capacity challenge in many public institutions, frustrating and time-consuming bureaucracy in public service as well as widespread corruption and the high level of ignorance among the workforce in the public sector.

2. SOLUTION

Having brought to perspective the challenges of the signed Freedom of Information Act in Nigeria, it is important to give the following recommendations:

- The Freedom of Information Act needs to be reviewed so that about 10 sections of the law which dwell on non-disclosure of information will be looked into.

- It is advised that the federal government and its agencies should take steps to ensure that necessary regulations or procedure are put in place for the effective implementation of the Act. For instance, the Attorney General of the Federation (AGF) should ensure that regulations already produced for the smooth implementation of this Act are gazette.
- More campaigns need to be done to increase the level of awareness of the public about Freedom of Information Act. The media as a core partner should increase public awareness and understanding of the Act.
- It must still be emphasized that it is the responsibility of all Nigerians to carry out the oversight function of ensuring compliance with the provisions of the Act and not that of the National Assembly alone.

3. SOCIAL RESPONSIBILITY THEORY

Robert Hutchins (the head of Hutchins Commission on Freedom of the Press) once said that “Freedom requires responsibility” (Marzolf, 1991). If the Press would be free to publish anything, it behooves on them to be willing to accept responsibility for whatever is published. This paper focuses on press freedom and agrees that freedom has a great responsibility behind it. In such a case, the best theory that would be appropriate is Social Responsibility Theory. The theory is an off-shot of Libertarian Theory and was propounded by F. S. Siebert, T. B. Peterson and W. Schramm in 1963.

Historically, Social Responsibility Theory owes its origin to the Hutchins Commission on Freedom of the Press, set up in the United States of America in 1947 to reexamine the concept of Press Freedom. The Commission worked hard at developing what has become known as the Social Responsibility Theory. This theory, according to Christian (2004), reflected a dissatisfaction with media, owners and operators and the way they distributed media while also accepting the following principles: The press should service the political system, enlighten the public, safeguard the liberties of the individual, service the economic system, entertain the public (provided that the entertainment is “good”), and maintain its own financial self-sufficiency. This theory is relevant to the work because it focuses on the media to be careful while exercising their freedom. The Nigerian media need to know the assumptions of the Social Responsibility Media Theory before jumping to make use of the Freedom of Information Act. McQuail (1987) cited in Anaeto, Onabanjo, Osifeso (2008) gives the assumptions of the theory as follows:

- That media should accept and fulfill certain obligations to society.

- That, through professional standards of informativeness, truth, accuracy, objectivity and balance, these obligations can be met.
- That media should regulate itself within the framework of law and established institutions to be able to carry out its responsibilities.
- That whatever might lead to crime, violence, civil disorder, or offence to minority groups, should be avoided by the media.
- That the media should reflect its society's plurality, giving access to various points of view and granting all the right to reply.
- Based on the principle in (1), the society has the right to expect high standards of performance from the media. Intervention can only be justified to secure the public good.
- Accountability of media professionals should be the society, employers and the market.

With the above principles, it is glaring that the "Freedom" carries obligations, and the Nigerian press, which now enjoys a privileged position under the new Freedom of Information Act, is obliged to be responsible to Nigerians in carrying out certain essential functions of Mass Communication.

For example, it would not be socially responsible for any Nigerian media despite the presence of (Freedom of Information Act) to have reported how on 25th December 2009, Umar Farouk Adul Multalab, used some methods, evaded security measures and smuggled a bomb in his underpants into an American airline en route Amsterdam to Detroit nor report the act of rape that happened between Mannir Goma and an old woman in Katsina State in October, 2015. The media while exercising their fundamental human right must put the public interest and the national security at heart. This is part of the onus of Social Responsibility Theory.

CONCLUSION

The Freedom of Information Act has been said to be right, that enables members of the Nigerian public to have access to information held by government bodies, because of this, it is now recognized as a fundamental human right to which Nigerians are entitled to. The public is entitled to the truth, and only correct information can form the basis for sound journalism and ensure the confidence of the people. With the Freedom of Information ACT, the press is now better armed to hold public officers accountable to the people. As the Fourth Estate of the Realm, the effect on journalism will undoubtedly have a spiral effect on the entire society for the benefit of all.

The success of implementation of the Freedom of Information Act is the co-responsibility of both the government ("supply side") and the governed ("demand-side"). The demand-side which includes the citizens, civil society and community organizations, media and the private sector must take responsibility for using the law as well as monitoring government efforts. The attitude of public administrators is critical to the successful implementation of the Act because public administrators, who are the face of government, will determine the quality of, and access to, information.

RECOMMENDATIONS

In view of the findings made in the study, the following recommendations are hereby submitted:

(a) That the workability of the law in Nigeria remains a concern. Allaying this concern will be highly predicated on how well strict compliance is made to the relevant provisions of the law.

(b) That some of the anti-press laws that adorn or law book should either be expunged or repelled. It is in that, that the FoIA can be beneficial to the Nigerian nation and its citizens alike.

(c) That effort must be made to punish public office holders who attempt to frustrate the public's effort to get information.

(d) Journalists should hold tenacious to the ethics of the profession and as report in manners that will advance the cause of development of the people.

REFERENCES

- Anaeto, S. G., Onabanjo, O. S., & Osifeso, J. B. (2008). *Models and theories of communication*. Maryland: African Renaissance Books Incorporated.
- Marzolf, T. (1991). *Civilizing voices: American press criticism, 1880-1950*. White Plains, NY: Longman Publishing Group.
- Media Rights Agenda. (2011). *Freedom of Information Act, 2011. An Explanatory Memorandum*. Retrieved from <http://ilo.org/dyn/natlex/docs/ELECTRONIC/87604/99958/>
- Ogbuokiri, K. (2001). *Nigeria: The limit of information act in freedom of information Act 2011 and the fight against corruption and corporate fraud in governance*. Retrieved 2016, October 13 from <http://www.allafrica.com>
- Robert, A. (2000). *Freedom of information act: Parliamentary of the United Kingdom*. Retrieved 2016, October 13 from <http://www.ukfreedom.com>
- Siebert, F. S., Peterson, T., & Schramm, W. (1956). *Four theories of the press*. Chicago: The University of Illinois Press.