

## Freedom of Information Act 2011: An Appraisal

Maureen Maxine Stanley-Idum\* and Dike Chijioke Obalum\*

### Abstract

*Access to information and records is a critical and an integral part of freedom of information as a right. Debate as to whether is a fundamental right or not continued to trial its grant or refusal in jurisdiction across the globe. However, recent legislation across the globe sought to establish the pivotal place of freedom to information in guaranteeing other fundamental rights to which citizens are endowed. Utilising the doctrinal approach, this article is an appraisal of the Nigeria Freedom of Information Act with the aim of ascertaining its contribution to the attainment of fundamental rights in Nigeria and the challenges in its implementation. The paper finds that whereas much have been achieved by the legislative intervention, much is still desired in bringing the FOIA in line with best practices on freedom to information across the globe.*

### 1. Introduction

The enactment of the Freedom of Information Act (FOIA) was greeted with cheer amongst the populace in Nigeria, particularly the media practitioners who saw it as a refreshing legislation that meets and expands the frontiers of global best practices in freedom of information. This cheer was not misplaced because access to information is a right that belongs to everyone. This is in accordance with Article 9(1) of the African Charter on Human and People's Rights and which has also been developed in the African Commission's Declaration of Principles on Freedom of Expression adopted at its 32<sup>nd</sup> Ordinary Session in Banjul, The Gambia on October 17 – 23 2002.

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\* Maureen Maxine Stanley-Idum LL.B (Hons), LL.M (Jos), B.L, Deputy Director General Nigerian Law School, Enugu Campus

\*\* Dike Chijioke Obalum LL.B (Hons), LL.M (Abuja), B.L, Indemnity Partners, Abuja

However, there were some misgivings in some government quarters perhaps in consideration of what challenges might be thrown

up by the enactment and implementation of the Act. This could be understandable in the sense that a public officer may not want to divulge too much information to the public if it would hurt public interest. This may have accounted for the length of time it took before the Bill was finally passed. It was first introduced in 1999 and finally assented to by President Jonathan Goodluck on the 28th of May 2011 as passed by the National Assembly making Nigeria the second country in West Africa to have a law on freedom of information.<sup>1</sup>

The Act made an attempt at balancing the public interest in having access to information and the interest of the State in guarding against harm being done to the nation or public service by the disclosure of certain documents. That is as it should be. However, since the enactment of the Act a little over three years ago, has it really made significant impact since its operation? Are all the states implementing the provisions of the Act? If not, why not? Recently there was some argument by some state governments, notably Lagos State, that it cannot implement the FOIA Act until it is domesticated. Can such argument be tenable? This paper takes a look at the provisions of the FOIA Act, the challenges in its implementation and attempts to proffer solutions.

## 2. Objectives of FOIA

The essence of the FOIA is to guarantee the citizens' right to access to information held by public bodies and institutions<sup>2</sup> and by private institutions performing public functions. The objectives of the Act are as follows:<sup>3</sup>

- i. To make public records and information more freely available;

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<sup>1</sup> Freedom of Information Act, <[www.ifex.org/nigeria/2012/09/27/foi\\_act/](http://www.ifex.org/nigeria/2012/09/27/foi_act/)> accessed 24 January 2019

<sup>2</sup> Section 2(7) defines public institutions as all authorities, whether, executive, legislative or judicial, agencies ministries and extra ministerial departments of the government, together with all corporations established by law and all companies in which government has a controlling interest, and private companies utilizing public funds, providing public services or performing public functions. This would necessarily include administrative or advisory bodies of the Government, including boards, committees or commissions of the State which are supported in whole or in part by public fund or which expend public fund

<sup>3</sup>The Long title to the Act

- ii. To provide for public access to public records and information;
- iii. Protect public records and information to the extent consistent with the public interest and the protection of personal privacy;
- iv. 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.

In order to achieve these objectives, the Act made certain provisions. Section 1(1) of the FOIA establishes the public right of access to information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution. The applicant need not demonstrate any specific interest in the information applied for.<sup>4</sup> Sections 1(3) and 2(6) further provide the right to institute proceedings in a Court to compel any public institution to comply with the provisions of the Act. The time limit for complying with a request for information is seven days, except if there is an extension of time, then not later than another seven days if the request is for a large number of records or the application is transferred to another public institution with greater interest.<sup>5</sup>

### **Access to Public Record, Personal Information and Third Party Record**

By virtue of section 2(3), the Act makes it mandatory for a public institution to keep public records and information about its activities, operations and businesses. These include descriptions of the organization, responsibilities and rules of the institution, administrative manuals, final and dissenting opinions and orders made in the adjudication of cases, policy statements and interpretations of same adopted by the institution, factual reports, inspection reports, receipt or expenditure of public or other funds, employees names, salaries, files containing applications for any contract, permits, grants, licenses or agreements, reports, documents, studies or publications prepared by independent contractors, grant or contract made by or between the institution and another public or private institution.

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<sup>4</sup> FOIA, s 1(2)

<sup>5</sup> Ibid, ss 4 and 6

Under the Act, information includes all records, documents and information stored in whatever form including written, electronic, visual image, sound, audio recording etc. This is in accord with section 258(1)(d) of the Evidence Act 2011 which defines document to include device by means of which information is recorded, stored or retrievable including computer output.

However, the right of access to information under the FOIA is not absolute and it may therefore be denied in certain circumstances based on public interest. Where access to information is denied, a Notice shall be given to the applicant stating the grounds for refusal.<sup>6</sup> FOIA makes it an offence to wrongfully deny access and if a case of wrongful denial of access is established, the defaulting officer or institute is liable to a fine of ₦500,000.00 upon conviction.<sup>7</sup> We shall now examine the types of information which are exempted under the FOIA and are therefore not accessible to the public.

There are however information that cannot be divulged to the public. Such information includes Information injurious to conduct of International affairs and defence of Nigeria. A public institution may deny an application for information if the disclosure of such information would be injurious to the conduct of international affairs and defence of Nigeria<sup>8</sup>. However, where the public interest in disclosing the information outweighs the anticipated injury, the information shall not be denied.<sup>9</sup>

Also, access to information may be denied if it contains records compiled by a public institution for administrative enforcement proceedings and by any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public institution.<sup>10</sup> However, this denial of access must only be to the extent that:

- i) Disclosure would interfere with pending or reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency or pending

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<sup>6</sup>. FOIA, s 7(1)

<sup>7</sup>. *Ibid*, s 7(5)

<sup>10</sup>. *Ibid*, s 11(1)

<sup>11</sup>. *Ibid*, s 11(2)

<sup>10</sup>. FOIA, s 12(1)

- administrative enforcement proceedings conducted by any public institution.<sup>11</sup>
- ii) Disclosure would deprive a person of fair trial or impartial hearing.<sup>12</sup>
  - iv) Disclosure would unavoidably compromise the identity of a confidential source of information.<sup>13</sup>
  - v) Disclosure would constitute an invasion of personal privacy under section 14 FOIA, except if public interest would be better served by the disclosure of such record. Section 14 FOAI pertains to files and personal information maintained with respect to clients, patients, residents, students, employees, elected officials etc.<sup>14</sup>
  - vi) Disclosure would obstruct an ongoing criminal investigation.<sup>15</sup>

It must also be stated that if the disclosure of the information could reasonably be expected to be injurious to the security of penal institutions, access may be denied.<sup>16</sup> This is also the case where such information could facilitate the commission of an offence.<sup>17</sup>

Section 31 FOIA defines ‘personal information’ as any official information held about an identifiable person but does not include information that bears on the public duties of public employees and officials. By virtue of section 14(1) FOIA, a public institution may deny access to personal information such as:

- i) Files and personal information maintained with respect to clients, patients, residents, students or other individuals receiving social, medical, educational, vocational, financial supervisory or custodial care or services directly or indirectly from public institutions.

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<sup>11</sup>. *Ibid*, s 12(1)(a)(i) &(ii)

<sup>12</sup>. *Ibid*, s 12(1)(a)(iii)

<sup>13</sup>. *Ibid*, s 12(1)(a)(iv)

<sup>14</sup>. *Ibid*, s 12(1)(a)(v)

<sup>15</sup>. *Ibid*, s 12(1)(a)(vi)

<sup>16</sup>. *Ibid*, s 12(1)(b)

<sup>17</sup>. *Ibid*, s 12(3)

- ii) Personnel file and personal information maintained with respect to employees, appointees or elected officials of any public institution or applicants for such positions.
- iii) Files and personal information maintained with respect to any licensee or applicant by any government and/or public institution involved in any occupational registration, licensure or discipline
- iv) Information required of any tax payer in connection with the assessment or collection of any tax unless disclosure is otherwise requested by statute.
- v) Information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies on the commission of any crime.

However, by virtue of section 14(2) (a) and (b) FOIA, there are circumstances where such personal information listed in section 15(1) can be disclosed and these circumstances are as follows:

- i) Where the individual to whom the information relates, gives his consent.
- ii) Where the information is publicly available.

Section 14(3) further provides that where disclosure of personal information would be in the public interest and the public interest in the disclosure outweighs the protection of privacy of the individual to whom the information relates, the public institution shall make the disclosure, subject to section 14(2).

Also exempted from disclosure are trade secrets and commercial or financial information,<sup>18</sup> information that could interfere with contractual or other negotiations of a 3<sup>rd</sup> party,<sup>19</sup> proposals and bids for contracts, grants or agreements and information, disclosure of which

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<sup>18</sup>. FOIA, s 15(1)(a)

<sup>19</sup>. *Ibid*, s 15(1)(b)

would frustrate procurement or give advantage to any person.<sup>20</sup> However, if disclosure would be in the public interest as it relates to public health, public safety or protection of the environment and if, the public interest in the disclosure outweighs in importance any financial loss or gain to, or prejudice to the competitive position of or interference with contractual or other negotiation of a third party.<sup>21</sup>

Furthermore, the privilege contained in section 15(1)(a),(b) and (c) in respect of third party information does not extend to information which is part of a record if that part contains the result or the product of environmental testing carried out by or on behalf of a public institution.

In addition, By virtue of section 16 FOIA, a public institution may deny an application for information which is subject to the following privileges:

- i. Legal Practitioner – Client privilege;
- ii. Health Workers – Client privilege;
- iii. Journalism confidentiality privilege;
- iv. Any other professional privileges conferred by an Act.

The legal practitioner – client privilege is also provided for in section 192 of the Evidence Act, 2011.

It should be stated that section 18 FOIA, an application for information which contains course or research materials prepared by faculty members may be denied by a public institution. Also privileged by virtue of section 19 FOIA are test questions, scoring keys and other examination data used to administer academic examinations or to determine the qualifications of an application for a license or employment. A public institution may not disclose plans produced by architects and engineers in respect of buildings constructed wholly or partially with public funds, to the extent that disclosure would compromise security.<sup>22</sup>

By virtue of section 19(2) however, an application for information shall not be denied where public interest in disclosing outweighs

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<sup>20</sup>. *Ibid*, s 15(1)(c)

<sup>21</sup>. *Ibid*, s 15(4)

<sup>24</sup>. FOIA, s 19(1)(b)

whatever injury that non disclosure would cause. Quite appropriately, the provisions of the Act do not apply to the following:<sup>23</sup>

- a) Published materials or materials available for purchase by the public;
- b) Library or museum material made or acquired and preserved solely for public reference or exhibition purposes; or
- c) Material placed in the National library, National Museum or non-public section of the National Archives of the Federal Republic of Nigeria on behalf of any person or organization other than a government or public institution.

### **3. Judicial Review of denial of access to information and proceedings *in camera***

Where access to information is denied, an application may be made to a High Court either of a state, the Federal Capital Territory or the Federal High Court<sup>24</sup> for review within 30 days of denial or within such further time as the court may allow, either before or after the expiration of 30 days.<sup>25</sup> Such an application for judicial review shall be heard and determined summarily.<sup>26</sup> The burden of proof is upon the public institution to establish that it is authorized to deny an application for access.<sup>27</sup>

The court is entitled by virtue of section 22 FOIA to examine any information to which the FOIA applies, which is under the control of a public institution and no such information may be withheld from the court on any ground. However, the court shall take such precautions as receiving representations *ex parte* and holding hearings *in camera*, when appropriate, in order to avoid disclosure by the court or any person, of information or other material in any proceedings arising under section 20.<sup>28</sup>

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<sup>23</sup>. *Ibid*, s 26 (a – c)

<sup>24</sup>. *Ibid*, s 30

<sup>25</sup>. *Ibid*, s 20

<sup>26</sup>. *Ibid*, s 21

<sup>29</sup>. FOIA, s 24

<sup>28</sup>. *Ibid*, s 23



This provision is in consonance with section 36(4) of the 1999 Constitution as amended which allows a court or tribunal to exclude from its proceedings persons other than parties and their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of young persons below the age of 18 years, protection of private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice. Section 36(4)(b) of the Constitution as amended also enables the court to sit *in camera* if a Minister or Commissioner of a State satisfies the court that it would not be in the public interest to publicly disclose certain matters.

If the court finds that an institution is not authorized to deny an application, the court shall order disclosure to be made.<sup>29</sup> Where the institution is authorized to deny the application but the court determines nevertheless that there is no reasonable ground to deny it, the court shall also order disclosure.<sup>30</sup> Again, if the court finds that public interest in disclosure being made is greater and more vital than the interest being served if the application is denied, then the court shall order disclosure.<sup>31</sup> An order of court for disclosure may be made subject to such conditions as the court may deem fit to make as appropriate.<sup>32</sup>

By virtue of section 27(1) FOIA, notwithstanding anything contained in the Official Secrets Act, the Criminal Code, the Penal Code or any other enactment, no proceedings, civil or criminal, shall lie against an officer of any public institution or against any person acting on its behalf, for disclosure of information and its consequences if such disclosure was made in good faith pursuant to the FOIA.

The Act provides that nothing in the Criminal Code or the Official Secrets Act shall prejudicially affect any public officer who, without authorization discloses information which he reasonably believes to show:

- a. A violation of law, rule or regulation

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<sup>29</sup>. *Ibid*, s 25(1)(i)

<sup>30</sup>. *Ibid*, s 25(1)(ii)

<sup>31</sup>. *Ibid*, s 25(1)(iii)

<sup>32</sup>. FOIA, s 25(2)

- b. Mismanagement, gross waste of funds, fraud and abuse of authority
- c. Substantial and specific danger to public health or safety notwithstanding that such information was not disclosed pursuant to the provisions of FOIA.<sup>33</sup>

A person who receives such information as in a – c above or further discloses it enjoys immunity from civil or criminal litigation.<sup>34</sup> It is clear that the provisions under this head are meant to protect whistle blowers where such would help to expose corruption and abuse of office.<sup>35</sup>

In accordance with section 28 FOIA, information contained in documents which are kept by a public institution under security classification or which are classified documents within the meaning of the Official Secrets Act may nevertheless be disclosed, provided that the public institution to which the application is made shall determine if the information is of a type referred to in sections 11, 12, 14, 15, 16, 17, 19, 20 or 21 of the FOIA. These sections list documents which are exempted from disclosure. We listed them earlier in this paper and will therefore refrain from repetition. If the information requested is not of the type exempted from disclosure by the aforementioned sections of the FOIA, then access to the information shall be given to the applicant.<sup>36</sup> If the information is of the type exempted from disclosure by the said sections of the FOIA, notice shall be given to the applicant.<sup>37</sup>

#### **4. Submission of Annual Report to the Attorney General of the Federation**

Under section 29(1) of the Act, every public institution shall submit to the AGF, a report covering the preceding fiscal year as regards the following matters:

- a) Number of determinations by the public institution not to comply with applications and the reasons for the determination;

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<sup>33</sup>. *Ibid*, s 27(2)

<sup>34</sup>. *Ibid*, s 27(3)

<sup>37</sup>. Y Akinseye-George, 'The Freedom of Information Act, the Media and the Anti-Corruption War,' *public lecture delivered in December 2011* 7

<sup>38</sup>. FOIA, s 28(2)

<sup>39</sup>. *Ibid*, s 28(3)

- b) Number of appeals by applicants, and the reason for the action upon each appeal that results in a denial of information;
- c) Whether the court upheld the decision of the public institution to withhold information and a concise description of the scope of information withheld;
- d) Number of applications for information pending before the public institution as of October 31 of the preceding year and the median number of days such application had been so pending as of that date;
- e) Number of applications received and processed by the public institution;
- f) Median number of days taken by the public institution in processing different types of information;
- g) Total amount of fees collected by the public institution to process such applications; and
- h) Number of full-time staff devoted to the processing of applications and the total amount expended by the public institution for processing such applications.

The public institution shall make the above report available to the public by means of computer, telecommunications or other electronic means.<sup>38</sup>

### **5. Dissemination, Notification and Reporting Obligations of the Attorney General of the Federation**

In order to monitor and ensure proper implementation of the Act, there are provisions in section 29(3) – (8) mandating the AGF to do the following:

- a) Make available to the public in hardcopies, online and at a single access point, the reports referred to in section 29(1)(a-h), submitted to him by the public institutions;
- b) Notify the Chairman and ranking minority member of the Committee on Government Reform Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Government Affairs and the judiciary of the Senate, not later than April of the year in which each such

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<sup>40</sup>. FOIA, s 29(2)

- report is issued, of the existence of such report and make it available to them in hard copies as well as by electronic means.
- c) Develop reporting and performance guidelines in connection with reports required by this section and may establish additional requirements for such reports as the AGF determines may be useful.
  - d) Ensure in his oversight responsibility that all institutions to which the Act applies comply with the provisions of the Act.
  - e) Submit to the National Assembly on or before April 1 of each calendar year, an annual report in respect of the preceding calendar year, which report shall include a list of the number of cases arising under the Act, the exemptions in each case, disposition of the cases, and the costs, fees and penalties assessed. In addition, the report shall include details of efforts made by the Ministry of Justice to encourage all government and public institutions to comply with the provisions of the Act.

## 6. Implementation of the FOIA

Some effort has been made towards the implementation of the FOIA in Nigeria. Perhaps in comparison to some other African countries, some milestones have been recorded in the implementation of the FOIA in Nigeria. According to Akadiri:<sup>39</sup>

The implementation in Nigeria is far above many of our contemporary African countries. Whether it is Uganda or Sierra Leone that just passed its own, Ethiopia or Angola, in terms of some of the milestones, quite a bit has happened in terms of trying to put in structures to support the implementation of the legislation.

The AGF in Nigeria has a coordinating role in the implementation of the FOIA and as part of his oversight responsibility he has issued two guidelines and one advisory in January 2012 on the annual report prescribed in section 29 FOIA, advising the institutions concerned that they have an obligation under the FOIA to submit their report and also

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<sup>39</sup> M Kadiri, ThisDay newspaper, Tuesday, June 14, 2011, page ix

suggesting a template for the report.<sup>40</sup> He further issued a revised version in February 2013.<sup>41</sup> The office of the AGF has also complied with the submission of annual reports to the National Assembly on the implementation of the Act.

Some institutions or departments of government have set up their FOI units which will be responsible for implementation of the Act, but some others have not. For instance, the National Assembly and the office of the SGF have set up their own FOI units while some others are in the process of so doing.<sup>42</sup> Some of the factors identified as hindering the setting up of these units include lack of understanding of the full scope of obligations under FOIA.<sup>43</sup> For example, some institutions were unaware that their obligations under FOIA is not limited to disclosure of information upon application but also includes display of certain information and regular updating of same whether or not an application is made for it.<sup>44</sup> Obviously, this responsibility will be better discharged by standing FOI units rather than on ad hoc basis, but this was not clearly understood then. For this reason too, some institutions did not make provisions for their FOI units' related matters in their budgets.<sup>45</sup> For others, it was a question of timing.

Meanwhile, in some states, FOIA is yet to be implemented based on the argument that they are yet to domesticate FOIA. We shall discuss this issue shortly in greater detail under challenges.

## **7. Challenges in the implementation of the FOIA**

Although some successes have been recorded in terms of implementation of FOIA, some challenges have also been met. We shall now examine some of these challenges. They are as follows:

1. Lack of an independent oversight mechanism such as an Information Commission poses a challenge to the effective implementation of FOIA. Section 29 places the oversight responsibility for implementation of FOIA on the AGF, but it

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<sup>42</sup>. *Ibid*

<sup>43</sup>. *Ibid*

<sup>44</sup>. *Ibid*

<sup>45</sup>. *Ibid*

<sup>46</sup>. *Ibid*

<sup>47</sup>. *Ibid*

has been suggested that creating an independent mechanism that will specifically take on this responsibility would have been better.<sup>46</sup> In the alternative, a specialized unit in the Federal Ministry of Justice should be created to ensure a more effective implementation of FOIA.

2. Reliance on court process as a means of compelling public officers to disclose information has been criticized.<sup>47</sup> We agree that the delay and expense that usually attend the litigation process in Nigeria may not augur well for the effective implementation of FOIA.
3. In Nigeria, there is a high level of poverty and illiteracy/semi illiteracy amongst the populace. As Akinseye-George<sup>48</sup> pointed out, 'the Act presumes the existence of a vibrant and informed public capable and willing to trigger its application by making requests for information from public institutions.' It is true that without such citizenry, the hope for greater accountability and transparency through access to public information and records may not be easily realized.<sup>49</sup> Socio-Economic Rights and Accountability Project (SERAP) has revealed that its findings show that 'there is limited awareness about the FOIA not only among members of the public in general, but even among learned people including lawyers and judges.'<sup>50</sup>
4. Red tapism and bureaucracy in the public service creates delay and this may also constitute another challenge in the implementation of FOIA.
5. In Nigeria, there is a culture of poor record keeping and maintenance.<sup>51</sup> This obviously poses a challenge in the effective

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<sup>48.</sup> *Ibid*

<sup>49.</sup> Akinseye-George (n37) 10

<sup>50.</sup> Akinseye-George (n37) 4

<sup>51.</sup> *Ibid*

<sup>52.</sup> ThisDay newspaper, June 24, 2014, p. 5, 'States don't need to domesticate FOIA for it to be implemented,' at a one-day seminar on 'The Role of Lawyers and Judges In The Implementation of FOI Act 2011,' organized by the Socio-Economic Rights and Accountability Project (SERAP) in collaboration with MacArthur Foundation. Report by Akinwale Akintunde.

<sup>52.</sup> M Kadir, ThisDay newspaper, Tuesday, June 14, 2011, page ix.

implementation of FOIA under which public institutions are to proactively disclose through diverse media at least 40 classes of information or records in their possession.

6. The issue of corruption in the public and private sector is also another factor that will militate against the realization of the objectives of FOIA.
7. Recently, the application of FOIA at the state level has been in contention. Some states in the federation have not implemented the law based on their argument that they are yet to domesticate the law although a few such as Ekiti State have done so. Ekiti State became the first state in the federation to domesticate the FOIA in July 2011.<sup>53</sup> Some states, notably Lagos state, argue that the FOIA must be domesticated in a state before it can become binding on the state. But, there are counter arguments and some propound that FOIA is a federal statute and does not need domestication to bind the states.

Proponents of the pro-domestication argument such as Sagay and Ngige have posited that FOIA only binds the Federal Government and therefore it has to be domesticated at the state level in order to be binding on the state government.<sup>53</sup> On the other side of the argument are persons such as Ozekhome who is of the view that the FOIA is a statute that is meant to enthrone transparency and accountability in governance across Nigeria and it applies to all the states in the Federation.<sup>54</sup> He stated 'I cannot see how the Lagos State government, of all the states in the Nigeria, can make the claim that it is not covered by a law that seeks to render government accountable to the people of Nigeria.'<sup>55</sup> Okocha<sup>56</sup> spoke in a similar vein as follows:

I know the FOIA is a Federal statute. And, in our principles of interpretation, whenever a federal statute has covered a subject

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<sup>53</sup>. ThisDay newspaper, Tuesday, July 5, 2011, p. 8, 'Ekiti replicates FoI Act'

<sup>54</sup>. Sunday Punch, February 16, 2014, p. 7 'Lawyers disagree over Freedom of Information Act,' Leke Baiyewu and Tobi Aworinde.

<sup>55</sup>. *Ibid*

<sup>56</sup>. *Ibid*

<sup>57</sup>. *Ibid*

matter of the legislation itself, it has covered the field. Every federal law is binding on everybody, including every government, individual and corporation in Nigeria. So, I do not understand the basis upon which the Lagos State government is now saying it is not bound by a federal statute.

Okocha argued that re-enactment is only necessary where the state House of Assembly wishes to add clauses pertaining to the state. To further fortify this view, Nweze<sup>57</sup> faulted states, especially Lagos for ‘hiding under the fact the FOIA has not been domesticated in their states for its non-implementation.’ He stated that domestication relates to international treaties and agreements signed by the Federal Government and that it is improper for a state government to hide under such to avoid implementing the FOIA.<sup>58</sup> We align ourselves with the later view that the FOIA needs no domestication.

## 8. Recommendations

In line with the appraisal of the FOIA herein, the following are recommended:

1. There is urgent need for creation of greater awareness in respect of this important legislation. The public at large, lawyers and judges need to be better informed and educated as to the workings of the FOIA. Already some NGOs such as SERAP have risen to the challenge and are organizing series of sensitization and capacity building workshops on the FOIA. More awareness is being created and hopefully this will impact on future implementation of FOIA.

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<sup>58</sup>. ThisDay newspaper, June 24, 2014, p. 5, ‘States don’t need to domesticate FOIA for it to be implemented,’ C C Nweze (Justice of the Court of Appeal, Calabar division), at a one-day seminar on ‘The Role of Lawyers and Judges InThe Implementation of FOI Act 2011’ orgainized by the Socio-Economic Rights and Accountability Project (SERAP) in collaboration with MacArthur Foundation. Report by Akinwale Akintunde

<sup>59</sup>. *Ibid*



2. An independent Oversight Commission ought to be put in place to monitor the implementation of FOIA. In the alternative, a specialized unit of the Federal Ministry of Justice should be set up to take up the responsibility and ensure a more effective implementation of the Act.
3. States that are yet to implement FOIA should be encouraged to do so. The argument that they are yet to domesticate FOIA and so cannot implement the Act is not tenable. The Act is a federal law and applies across the country.
4. Public institutions that are yet to set up FOI units should also be encouraged to do so and necessary funding for this also provided. This will ensure more effective implementation of the provisions of the Act.
5. All institutions should be encouraged to embrace the culture of good record keeping and maintenance. This is important because without adequate records, we cannot hope for effective implementation of FOIA.
6. Judicial Reviews of denials should be fast tracked by our rules of court as a way of combating the slow wheels of our justice delivery system.
7. There should be zero tolerance in our public service as this may constitute an impediment to access for information for greater transparency and governance in the country.

## **9. Conclusion**

The public should not be shut out from the right to know what the government is doing. Information should only be withheld based on legitimate reasons codified in international laws or the national laws<sup>59</sup>. The state interest in non disclosure of certain information in order to

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<sup>60</sup>. ThisDay Lawyer (newspaper), Tuesday, June 14 2011, Kadiri Maxwell, Op. Cit., ix.

prevent harm being done to the nation or public service must be balanced against the right of the public to have access to information. The FOIA has attempted to create the necessary balance between public interest and state interest. However, the implementation has been a challenge for reasons adduced earlier. Officials must rise up to their responsibilities to assist applicants for information. Where applications are denied, they must be able to justify their denials. If the recommendations listed above are implemented, hopefully there will be more effective implementation of the FOIA, leading to greater transparency and accountability in governance.