THE PRESIDENT'S NEWSLETTER

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JUDICIAL REVIEW, NOTICE OF DENIAL AND REVIEWABILITY

Headline Stories

A REPORT PUBLISHED BY FOIA COUNSEL

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Editorial Team

About Us

FOI Counsel is a law group established primarily to provide legal assistance to NGOs and media seeking for information under the Freedom of Information Act 2011. We are also, the first Freedom of Information Act (FOIA) litigation-specialized firm in Africa. As the demand for our services increased, we billowed out into four thematic areas of work and these are:

FOI Advocacy & Legal Aid

We focus on ensuring transparency and accountability in government processes and also, litigating on behalf of individuals and organizations seeking to obtain government-held information.

Human Rights Litigation

We protect the fundamental rights of individuals and groups who have been subjected to violations and seek justice to those who have suffered harm through legal means.

Research & Policy Advocacy

We empower change and justice through in-depth analysis of laws, precedents, and regulations, and effective advocacy strategies to shape polices and promote equitable outcomes in society.

Land Reforms & Rural Development

We promote equitable access to land resources and support the sustainable growth and rights of rural communities.

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From the Editor's Desk

Within and outside Nigeria, it was thought that the Freedom of Information Act 2011, would profoundly modify the public administration model in Nigeria, Regrettably, the system functions pretty much as it has always been. The only flower is that if a record of information is not released, the requester is entitled to a right of judicial review under the Freedom of Information Act 2011 to compel the respondent to carry out its public duty of disclosure of public documents whether in its custody or in the custody of an allied agency whether or not the applicant has a direct and substantial interest in the performance of the duty.

It was observed that records and information are now gotten to the throat of the court instead of administrative desks. The impact is that it turns the Act upside down and makes it combative. It was also observed that the deployment of technicalities by judges in interpreting the FOIA has frustrated the development of the growth of the law. FOI Counsel is a leading legal group supporting civil society groups and media to enforce the right to information. The group has been at the forefront of public interest litigation and advocacy since 2014. FOIA Counsel assisted over 112 applicants to file FOIA review applications. It filed the first FOIA appeal at the Supreme

Our mandate, contain facts of the cases we have handled with the judgment of courts. It is this interrogation that develops the law and directs a reform path. In reaching SDG 16 target 10 by indicator 2 on public access to public records, FOI Counsel believes it needs to complement the government by continually engaging the system with FOI requests so as to construct a stronger institution for sustainable development and open records regime.

President Aigbokhan
Editor-in-Chief

Judicial Review Under FOIA

Introduction

Within and outside Nigeria, it was thought that the Freedom of Information Act 2011, would profoundly modify the public administration model in Nigeria, regrettably, the system functions pretty much as it has always been. The only flower is that if a record of information is not released, the requester is entitled to a right of judicial review under the Freedom of Information Act 2011 (hereinafter referred to as the 'FOIA') to compel the respondent to carry out its public duty of disclosure of public documents whether in its custody or in the custody of allied agency whether or not the applicant has a direct and substantial interest in the performance of the duty.

An application for judicial review of the decision of government offices (hereinafter referred to as "government") is either an appeal or an application. Enforcement of the right to information is hybrid considering the canvass of judicial review and reviewability modality in the law, the rules of court, and other extant laws. The requirement of pre-action notice eave in addition to the letter of request as a requirement for enforcement of the right to information is a world fooled.

The court can interfere with the exercise of government functions if any arms of government violate the provisions of the Constitution of the Federal Republic of Nigeria or any other enabling laws. The power of the court to review the action or inaction is derived from the constitutional right to keep all arms of government within the bounds of their powers and to provide remedies for abuse of power[1] which can be in the form of a fine, imprisonment, or both.

Judicial review of the right to information is the procedure co-created by statute to provide succor for denied users. It is concerned solely with the manner in which the decision-makers have applied the relevant exemption to the request. The role of the court in judicial review is to exercise a supervisory cum appellate jurisdiction.[2] The mode in which the Court is approached for the enforcement of the right to information does not matter once it is clear that the originating process seeks to redress the infringement of a constitutional right.[3] FOIA provides a rational review structure for those aggrieved by the government's decision and the outcome result in new decisions being substituted for the previous or mute decision. Applicant can bring judicial review by way of writ of summons, originating motion, or summons. Once a particular mode has been adopted, it has to be strictly complied with in line with the appropriate rules of the court.[4]

In FOIA litigation, the burden is on the government to prove that documents are covered by a particular exemption or that a public interest test for release is not applicable. This burden is discharged on probability even in the face of a lack of evidence to establish a case during a summary trial. The Applicant only needs to show that the Respondent does not have sufficient evidence or materials in support of the exemption relied on. Once

in court, the requester shows only that he or she applied for information, and the burden shifts to the government to justify its withholding of responsive records. The requester bears the burden of proof only when challenging the denial of a fee waiver or expedited processing.[5] It is not out of place for the requester to show that he has a sufficient background that backs up his/her knowledge or record search.

FOIA undoubtedly brings the common law duty for the government to give reasons in line with the obligations of the statute. The notorious disposition of the government declining to give requester reason(s) for denial would be sufficient to enforce high-traffic public interest heading underpinning compulsory disclosure. The refusal to give reasons where the requester is waiting would be a sufficient cause of action.

There is a duty on the agency to give reason(s) for denial because all administrative decisions are reviewable.[6] The duty of the government to give a reason for the administrative decision is because, without reason(s), the court cannot have anything to place on the scale of review. The jurisdiction of the court is primarily to review the non-disclosure of public information by the government. It is important that government or parastatal must have a denied request or any other unfavorable decision on the request to avail the court jurisdiction on the matter or to enable the court to review the non-disclosure by relevant government agencies.

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What is Judicial Review?

Judicial review is a means of securing legal control of the administrative process and deterring abuse and excesses. It is simply the power of the court to exercise supervisory jurisdiction over the actions of the executive and legislative arms of government.[7] It is through the judicial review that the requirements of the legality of the exercise of powers by public bodies is tested.[8] It is the power of the court in appropriate proceedings before it to declare a government measure either contrary or in accordance with the constitution or other governing law with the effect of rendering the measure invalid or void or vindicating its validity.[9] The court can only review the action taken by the government solely for the purpose of determining whether or not the government has acted within the limits of exemption as provided by statutes.

Judicial review ensures greater fairness and openness of decision-making. Any statute guaranteeing public obligation without a review mechanism automatically takes away an oversight component for accountability and measurement. The contrary will promote greater unfairness, and inaccessibility which are a disincentive to better space for public participation in governance. In Nigeria, judicial review under the FOIA is distinguishable from an appeal against a judicial decision. The purpose is not to substitute a decision of the court for the decision of the administrative body but to examine whether the FOIA has been correctly interpreted or whether the exemption conferred by statute has been lawfully applied and also whether the government has acted fairly.

Judicial review is only available to test the lawfulness of decisions made by public bodies. If the body whose decision is being challenged is a private body, then the remedy of an aggrieved individual will lie in private law proceedings.[10] Judicial review is not an appeal but supervision in the manner administrative decision are reached using statutory application rules, standards, and regulations as benchmarks. Therefore, the courts can only review the action taken by the government solely for the purpose of determining whether or not the government has acted within the exemption molded by the FOIA as against the information or records sought for in the letter of request.

Special Procedure for Judicial Review

(a) Letter of Request for Information

Courts follow strictly the provisions of various rules of court relating to the commencement of the judicial review. The various High Court Rules provide for two-phased applications (ex parte application for leave and substantive application by way of summon or motion on notice). It is only a letter of request that confers on the court, the jurisdiction to hear applications under FOIA. An applicant who wants information must make a formal letter to the government, requesting for information.

Generally, a letter of request must be written by the applicant personally because it is only the person that made an application that can sue, save a case of illiteracy and disability.[11] The aforesaid letter need not disclose the interest the applicant has in the information sought[12] and how the refusal will truncate his interest.[13] In Canada, a request for information must be made in writing personally and directly to a government institution and the letter is accompanied by a fee of $5 USD.[14] The identity of the requester is confidential and known to the Access to Information Program (ATIP) Coordinator.[15]

In Nigeria, an application made under FOIA by a lawyer on behalf of a client is incompetent[16] and the constitution[17] does not allow for information brokering as practiced in South Africa.[18] In any case, the identity of the requesting party does not have any bearing on the proper disclosure of information under the FOIA.[19] The Promotion of Access to Information Act (PAIA) 2000 of South Africa allows for

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information brokerage but the broker must be domiciled within the country.[20] The inability of citizens to negotiate the myriad structures of the state bureaucracy in order to access their rightful entitlements necessitates the legitimate intervention of a broker.[21] NGOs still request for information through law firms as they prepare for litigations as willingly strategies against non-disclosure. The letter requesting for the information is material in FOIA litigation.

It is more accurate to describe the lawyer's letter requesting for information on behalf of its client as a brokerage and it is not allowed but it is a necessity given the towering level of illiteracy in the country. It is the letter requesting for information that serves the purpose of intention to sue. The requirement of a pre-action notice is merely ornamental in the right to information suit. Agreed that pre-action notice has long been accepted as part of our civil procedure wherever statutes prescribe that such notice should be given,[22]such a requirement may not apply to the enforcement of the right to information because the request for the information itself serves the purpose of notice. The enforcement of the right to information has urgency woven around it, so much so that a pre-action notice would definitely negate its purpose.

Failure to give a pre-action notice does not dismiss proceedings since the essence of a pre-action notice is to bring an impending suit to the knowledge of the government and to provide an opportunity for an amicable settlement.[23] The service of a pre-action notice is at best a procedural requirement and not an issue of substantive law on which the right of the applicants depend. At worst, the non-compliance puts the jurisdiction of the court on hold pending compliance.[24] In **Ngelegla v. Nongowa Chiefdom**,[25] the West African Court of Appeal considered the provision of section 19 (2) of the Tribal Authority Ordinance, Laws of Gold Cost which is in *pari material* with section 12 (2) of the Nigeria National Petroleum Act.

The West African Court of Appeal stated that the requirement of service of pre-action notice is "to give the defendant breathing time to enable him to determine whether he should make reparation to the plaintiff". Where the determination of civil rights and obligations of a person is in issue any law which imposes conditions that is inconsistent with the free and unrestrained exercise of that right is void.[26] In a judicial review under the Freedom of Information Act 2011, the enforcement of fundamental rights, an old crusted procedure by which a potential litigant has to prepare and head a letter pre-action notice before instituting an action is ancient and misplaced and failure to satisfy such conditions cannot render judicial review incompetent.

(b) Leave for Judicial Review

Generally, leave for judicial review is sought before any action for judicial review is made. With judicial review, FOIA powers the applicant to institute proceedings in the court to compel any public institution to comply with the provisions of the law.[27] Importantly, where a statute sets a direct review process, leave for judicial review cannot be used to circumvent it. It is clear that direct application for judicial review is the correct procedure and safer to make for enforcement of the right to information. An application for leave is sought ex parte but after the expiration of the thirty days after the letter of request, the ex parte application will be sought alongside a motion on notice for leave for an extension of time to review the decision of the government,[28] anything less is an infringement of the right to a fair hearing of the Respondent.

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Freedom of Information

Notice and Scope of Review

Freedom of information notice can either be direct or Glomar. A direct response is when after a formal request is made to a government office, a notice is given on the state of the request whether positive or negative. Positive notice means that the information sought for is disclosed and negative notice means that the information sought for is refused. In Nigeria, negative notice is by conduct than in writing. On the other hand, a Glomar response/notice refers to an answer to a request that neither informs nor denies an FOI request.

There are two types of instances in which a Glomar response is largely deployed. It is common for request that is connected to security reports or information. This is because to deny a request on security grounds would provide information that the documents or program which the requester is seeking indeed exist. Another instance of deploying Glomer's response is a case of privacy in which a response as to whether or not a person is or is not mentioned in law enforcement files may have a stigmatization connotation. Importantly, judicial review of an administrative decision is impossible without adequate provision of reasons.[29] The withholding of reasons for a decision can have the effect that the constitutional right of access to court may have on administrative decisions.

Right, or reason for denial of information is a stand-alone right as the right to information. They are dependent on each other and when threatened review is key. The function of the obligation to give reasons is primarily to facilitate review. The duty to give reasons as an aspect of procedural fairness is inherently linked to the applicant's right of access to the court. For the government to show that its denial falls within the statutory exemption, it must first show to the court the reason for refusal or a basis for rendering the statutory exemption. The socket of exemption is fused into the reason for denial. Failure to disclose the reason for denial is an outright

abandonment of statutory exemption even where pleaded. The question as to the existence of exemption may not be capable of being ascertained if the basic reasoning of the agency remains obscure to the court and the applicant.

The court is enjoined to go into the factual situation to determine the reasonableness or otherwise of the administrative action and make a substantive order that substitutes that of the government. FOIA has great potential in extending judicial review to the merits of a target activity.[30] In **Mallak v. Minister for Justice, Equality**[31], Fennelly J. relying on a wide range of authorities including the Irish Freedom of Information Legislation[32] and Article 41 of the Charter of Fundamental Rights identified a duty to give reasons generally applicable to administrative decision-making and states thus:

"In the present state of evolution of our law, it is not easy to conceive of a decision-making brief dispensed from giving an explanation either of the decision or of the decision-making process at some stage. The various means of achieving fairness are the reasons to accompany the decision. However, it is not a matter of complying with a formal rule: the underlying objective is the attachment of fairness in the process. If the process is fair, open, and transparent and the affected person has been able to respond to the concerns of the decision-maker, there may be situations where the reasons for the decision are obvious and effective judicial review is not precluded. Several converging legal sources strongly suggest an emerging commonly held view that persons affected by administrative decisions have a right to know the reasons in which they are based in short to understand them"[33]

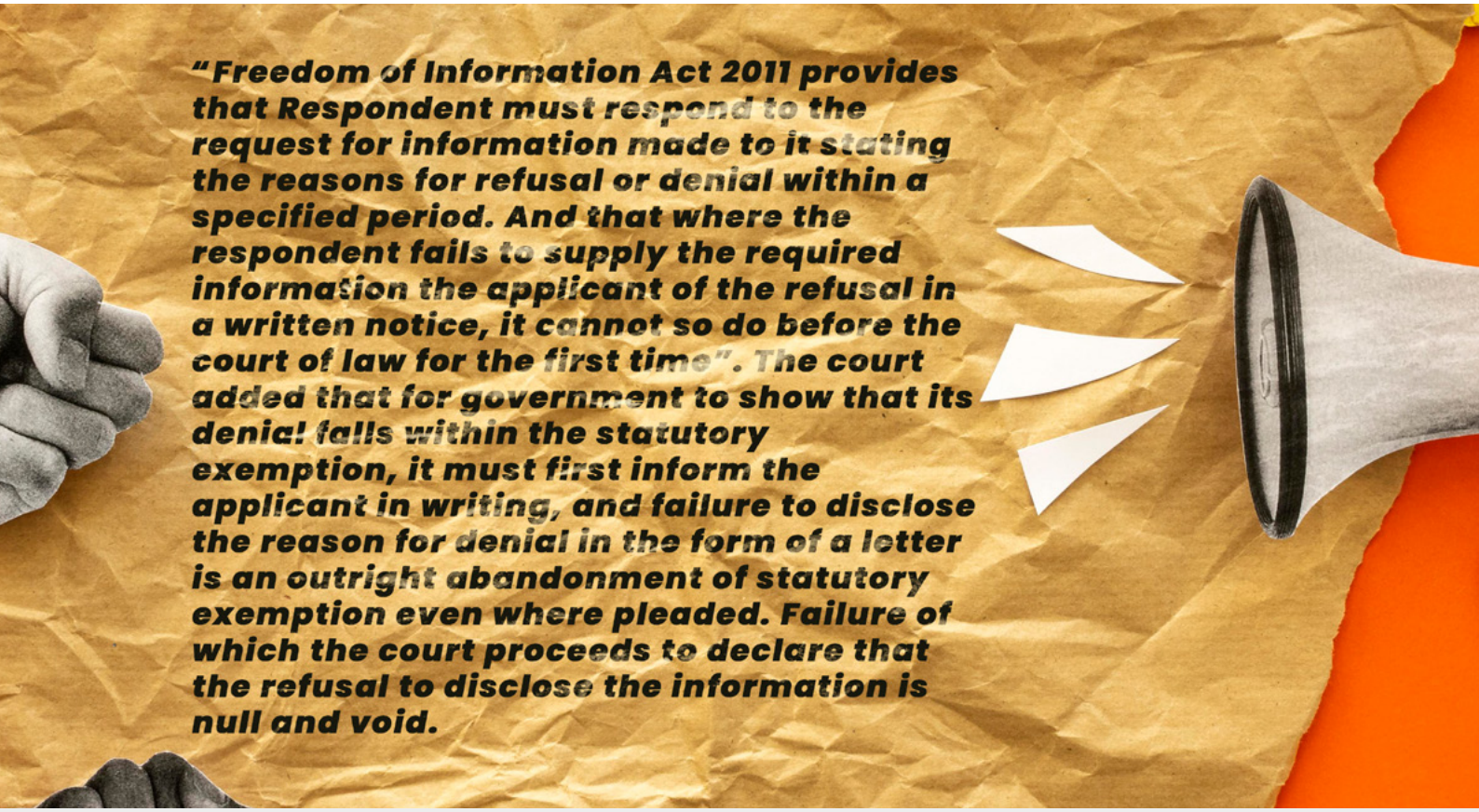
Government offices who, in order to demonstrate that their case falls under the statutory exemptions that warrant the denial, first need to show to the court reasons for the denial. The court compares side by side the statutory exemption and the reasons for the denial in the exercise of discretion. Government cannot state the exemption upon the denial made at the court but to the applicant. The court is not a court of first instance for exemption. The obligation to review exemption is dependent upon a reflection of the reason for denial stated in the notice.

Judicial review is to weigh the exemption against the reason(s) for denial. Where there are no reasons for denial the court cannot review the statutory exemptions. The Respondents could deny the request for information upon the ground set out under the law[34] and must state the reason for its refusal based on these grounds.[35] The statutory requirements for the Respondent to give the reason for its refusal to disclose or provide information is not predicated on its defence at the trial but in response to an application for information.

There is a statutory mandate on the Respondent to reply to a request either by setting out the grounds under any stipulated exceptions in the Act.[36]

The reason for the refusal of the FOI request must be in writing and must contain the portion of the law supporting the denial.[37] The denial must contain the names, designation, and signature of each person responsible for the denial of such application.[38] In the hearing stage, it is inconceivable that government can establish a defence on the merits without prior notice. The government ought to show that the exemption was first relied on in the written notice as there is no substantial question to be tried in the review process where there is no notice side by side with the letter of request. Defence raised for the first time during the hearing does not amount to a defence under FOIA. A mere general assertion or denial that government is not under a duty to release public records will not suffice. The exemption provision must be referred to in a written notice. An allegation that the information is exempted from disclosure is a theory of law and facts constitute no defence unless it is raised in the notice of denial. Government cannot rely on a defence not raised in the notice.[39]

In **FOIA COUNSEL v. CONTROLLER GENERAL OF PRISONS** (Suit No: B/63/OS/2018), the applicant commenced the action after a letter was sent to the Nigeria Prisons Service for records of foreign detainees in its custody but the agency refused to respond to the request. The applicant through its counsel President Aigbokan, Esq sought an order of the court for the Service to release the aforementioned records or information. Mr. A.G Salihu, Esq of the Nigeria Correction Service argued that the information sought for is a breach privacy right of a third party, national security, and foreign affairs. He argued further that the information sought for is foreclosed on these grounds. The court on its part refused to consider the exemptions relied on by the Service on the ground that the exemption ought to be raised first in a written notice made to the applicant. The Court held further that;



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Health Tips

1. Coconut and groundnut are sexual drive enhancers.

2. Carrot and cucumbers are sperm boosters!

3. Swimming enhances your memory.

4. Dancing reduces stress, Sex is also good but do not abuse it, 3-4 times weekly.

5. Exercise is a life extending therapy.

6. Frequent talking with enthusiasm is an anti-aging.

7. Congested bucal cavity is potentially hazardous, brush your teeth morning and night.

8. Beans is an anti-cancer, you can remove the skin if it gives you trouble after eating.

9. Eating smoked fish is suicidal because it is double monoxide and could elicit cancerous cells.

10. Beef is very dangerous to those above 40yrs.

11. Milk is not really ideal for those who experiences noisy and stomach upset after drinking it. Such indicates milk fermentation in the system.

12. Soft drinks and juices shouldn't be abused. You can prepare your own juice with fruits. Don't accumulate synthetic sugar in your body.

13. Make watermelon your companion as it cleanses your liver and kidney, and also enhances their functions.

14. Eat apples, carrot, onion and other vegetables every day.

15. Cease your breathe for at least one minute when people cough or sneeze, especially in an enclosure or in a public transit.

16. Washing of hands regularly is a major way of preventing some infections.

17. Okra is rich in protein.

Take good care of yourself!

Summary Trial Procedure under FOIA 2011

A summary trial is distinct from a full trial. In summary trial under FOIA, the court looks at the letter of request for information, the grounds for refusal, and other facts upon which the application is made. By this proceedings, the Respondent has an obligation to show that he has a good defence with detailed particulars of notice of non-disclosure. The court is then called to determine whether the materials sought were classified and not to determine the proprietary of the denial decision or unfounded objections. The court is under a duty to review de novo and decide if the documents sought for are classified or exempted and not whether the case ought to be by writ or whatever.

Under the summary trial, a respondent must show a bona fide or good defence on the merits based on outlined statutory exemptions and not engage in manipulative defence. To show that he has a good defence to the claim on merit, the Respondent must disclose facts to satisfy the court, usually by affidavit. To achieve this, the respondent is required to condescend upon particulars of exemption in writing. The court is to summarily review the proprietary of the refusal and not to decide if the materials were in fact classified. The court looks at the respondent's notice to draw a conclusion on its review and absence of which the court gives judgment in favour of the applicant

The summary trial procedure is designed to enable a party to obtain judgment without the need for a full trial.[40] It is a non-jury proceeding that settles a dispute in a relatively simple manner.[41] A summary trial is distinct in its manner of initiation, institution, and conduct and it is distinct from a full trial. FOIA is resolved as a matter of law on a motion for summary judgment. A summary judgment can be granted when the facts are not contentious, or are questions of law, or where the acclaimed contentious factual issues are not genuine and material.[42]

The application under FOIA is sui generis. Order of mandamus procedure under FOIA is by originating summons. The volume of FOIA cases are by motions and some judges often wrongly conclude that there are material facts in disputes. **In REGISTERED TRUSTEE OF CITIZENS AWARENESS AGAINST CORRUPTION AND SOCIAL VICES INITIATIVE (CACASVI) v. PETROLEUM EQUALIZATION FUND PEF** (Suit No: FHC/ABJ/CS/52/2021), the applicant by a letter dated 16th December 2020 sought for information and public records as part of the applicant's activities to review corruption and integrity index in public institutions in Nigeria. The information sought includes;

a) Request for the information for a certified true copy of the nominal role, position, and salary

b) The certified true copy of approval for recruitment from 2015- 2020

c) A certified true copy of evidence of the advertisement of recruitment

d) A certified true copy of the waiver for recruitment from 2015-2020

The Respondent denied the Applicant the aforesaid information. The applicant's deponent stated that the failure of the Respondent to release the needed information to the applicant has reduced the knowledge of the applicant on current affairs. At the hearing, the Respondent hinged their defence on its refusal to respond to the FOIA application on three grounds namely;

a) The name on the letterhead is different from the name on the suit

b) Disclosure of Respondent's nominal roll and salaries without the names of the employees violates the privacy of the employees of the applicant

c) That the Respondent is self-accounting and self-sustaining

d) Information sought is on the website of the National Salaries, Income, and Wages Commission

Importantly, the only issue raised in the preliminary objection in this is whether an originating process filed without an affidavit of non-multiplicity of action renders the suit incompetent. Unfortunately for the Respondent's counsel, the court found that the applicant filed non-multiplicity and attached it to the original copy of the process filed, so the objection collapsed on its face. The Federal High Court of 22nd day of June 2021 through His Lordship, Justice A. I. Chikere, Judge held that;

> ***"In the instant case, the applicant commenced the present action via originating summons…….. It is improper to commence civil proceedings by Originating Summons where the facts are likely to be in dispute. There are a lot of facts that are in dispute. This is evident when the Respondent contends that amongst others that they were served with a letter requesting the information.***

Assuming but not conceding that the facts were contentious, the Court ought to raise the issue of mode of commencement and request the parties to address him on it or order that the parties put their witness (es) in the box to demonstrate their evidence. The court has the power to give effect to the overriding objectives of the Freedom of Information Act. One of the overriding objectives of FOIA is to expansively and purposefully enforce access to public records available in any frontier. Unarguably, the summary trial procedure under FOIA is to prevent the hollow defence from defeating the right of parties by delay and at the same time causing great loss to the plaintiff who is waiting endlessly to access the requested public records. Under the FOIA, the information sought for that is not exempted be ordered for immediate release.[43] The main essence of the section is to forestall delays and prevent the government from dribbling and frustrating the applicant.

The government's decision can be vitiated by want of reason for non-disclosure. Public officers are not exempt in the performance of their statutory functions from general constitutional requirements of fairness and fair procedure. The decision becomes prima facie reviewable on the ground that fair procedure had not been observed. The courts reviewing FOIA cases may grant somewhat more deference to the government's interpretation of the case.

The right of access must be construed in line with the exemption to give the correct balance of the competing public interest involved bearing in mind the stated object of the Act. The reign of exemption administrative ouster is antithetical to the objects of FOIA. The absence of reasons in support of the exemption or non-explanatory exemption is unjust and antithetical to openness, accountability, and informed public participation in the process of government. One impact of the Ota Summit preceding the enactment of the Act is that exemptions should be narrowly drawn and accounted for. Once government fails to establish grounds for denial by written notice, the courts will not review the ground raised first during the summary trial. Under any style of review, agencies must be held to give reasons in respect of their decision as it amplifies the usefulness of the doctrine of the rule of law. Where there is no reason for denial as a response to the request, the court is called upon to summarily grant the applicant's request. Where the Court decides

to conclusively defer to the government's decision to withhold a document based on the reason for denial stated in the notice of denial, the applicant can further appeal the decision

The position has been that exemption provisions are included in the legislation for the purpose of balancing the objective of providing access to government information against legitimate claims for the protection of sensitive public information. In practice, the prima facie right of an applicant to information has often been replaced by the government's presumption that it has the right to claim an exemption or objection and this is wielded with impunity against unwanted requester without recourse to the objective of the law. Before a party can lay claim to exemption in court he must have drawn the attention of the requester to it by a recognized administrative measure. Exemption must be content not category or custody.

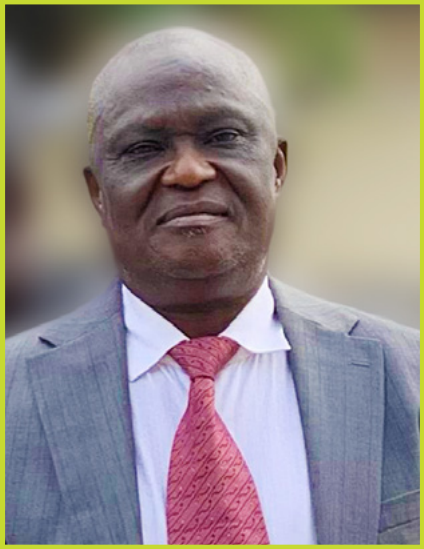
Conclusion

There is no defence to FOI action where there is no written notice. The plaintiff is entitled to judgment as claimed even where there is a fair dispute as to the availability of the records. Failure to issue a notice of denial denies the court of materials upon which the court can readily discern a good defence. In FOIA defence, the Government must prima facie show that it has a good defence with detailed particulars of notice of non-disclosure. To achieve this, the government is required to condescend upon particulars of exemption in writing for the defence not to be seen as frivolous. The court is to summarily review the proprietary of the refusal against the request. The court looks at the government's notice to draw a conclusion on its review and absence of which the court gives judgment. The law intended the legality of the decision of the government not to disclose with the merit of same and powered the court not only to review but to adjudicate and give special order for disclosure of the information sought for. The court is empowered to substitute her decision for that of the government. The essence of the jurisdiction of the court is to do justice.

Exclusive Interview

NBA is under the Body of Benchers !

- Yunus Usman Ustaz, SAN



Learned Silk please take us through your background

My name is Yunus Ustaz Usman. I am a Senior Advocate of Nigeria and I became a Senior Advocate of Nigeria by the grace of God on the 20th day of September 1999. I was born into a peasant family in a village called Ogbogogbo Village, Dekina Local Government Area of Kogi State. I was born on the farm on Friday 19th November 1957. I went through what we call then the Native Authority Primary School (NA Primary School) between 1962-1968 during that period most cases I had to do menial jobs to take care of my school fee and I was selling firewood and carrying loads in the market and I was following one of my uncles to work as a local building contractor and that was how I survived by the grace of God.

As a highly revered lawyer and Muslim cleric, what is your experience with your creator?

I have so many memorable experiences. God has come down to help me directly several times, not through anybody. In 1994, I was handling a case at the Supreme Court in Lagos, and at the time it was only Nigeria Airways that connect Kaduna with Lagos. When I got to the airport I discovered that the airline increased the air ticket 100 percent and after paying for the airfare I did not have enough money to stay in the Ikoyi Hotel I went to stay in a small Inn. I proposed in my heart that I will visit a friend for transport fare after court the next day. The morning of the case, I was surprised I opened my luggage I saw mint currencies inside my luggage and I was humbled by the experience. So God came down directly to help me. I have been to Hajj more than twenty-two times. I have not bought food for more than three times. When we get to the restaurant to eat, they will refuse to collect money from me and they will give me food and even add extra. Sometimes, I go there in expensive dress, yet they still served me free.

In 2003, I was led in a gubernatorial election petition by a well-known Senior Advocate of Nigeria. We were paid some money by the client and traveled for Hajj. The money we had was not enough so we decided to stay in the same hotel room. *One afternoon I went to pray and after prayer, I decided to stay in an open space to relax and there was nobody near me but I just felt some heaviness from my side and I looked beside me it was Saudi currencies, plenty of it. I picked it up and counted it, it was 5000. I am not a billionaire but I don't have a problem with money. Any money I need per time comes to me as at when due.*

What is your philosophy about money?

Any little money I have I share with those who don't have and my prayer to God is that "God does not give me money that I cannot use to help the needy". I have never slept with five thousand naira in my pocket. If you give me one million naira in the afternoon know that it will finish in a few hours. I cannot keep money in the name of saving and prudence while others are crying. This is the fulcrum of my philosophy and it is captured in the autobiography I am writing.

What is the philosophy behind your humility?

I am humble because I know I am nothing and I am not better than anyone, then why should I be arrogant? It is only a foolish person who is arrogant. Whatever you have achieved in life is just by the grace of God alone. It is this grace that should make you humble and in any case, I have never seen an arrogant person who has not been destroyed before the person died.

What is the essence of the arrogant spirit, you don't know when death would start knocking and you just don't know what your life would be like in the next seconds so what is the essence of being arrogant? It is only a foolish and ignorant person who is arrogant.

How do you relax?

For now, I relax with my friend and my children. I have nineteen of them and anytime I want to relax I just call them and we sit down together and gist and fortunately for me despite my age, I play badminton and the first thing I do once I wake up is to press up with my hands for nineteen times and breathe in and I can walk for 5km every morning before I take my bathe. I also do fast, I don't eat before noon; that is my life. I faced hunger right from my childhood and I have defeated it. Two slices of bread can take me the whole day.

You have put over four decades into the practice of law, is there anything you will have done differently if given another chance to start afresh?

No, I wouldn't have done anything differently. Let me tell you, not because I make a lot of money from legal practice, I just enjoy the way God has led me all these years

What is your most memorable moment date, month, and year?

My most memorable moment was when I was conferred with the title of the Senior Advocate of Nigeria. I was earlier shortlisted in 1997 but a revered senior colleague who is also my uncle wrote a petition against me. In 1999, when God wanted to show his supremacy power, two days before the selection committee meeting, my uncle flew abroad and returned two days after I have been shortlisted. But I have forgiven him. If you don't forgive others why do you want God to forgive you your sins too?

What is your lowest moment?

It is when I hear the cry of a child. It destabilizes me all round

What was the key challenge you have encountered on your journey as a lawyer?

Legal practice comes with a very serious challenge particularly election petition matters and in my life, I don't think there is any lawyer who has miraculously completed a case than I. God intervened in my cases in many ways. I also don't think there is any lawyer who has faced chastisement or embarrassing comments from the court than myself. But by the grace of God in some of these cases when I am attacked I take it calmly and in the end, I win the case. There was a case my son went with me it was embarrassing but I treated it wittingly and I won the case. *Litigation is so interesting that you lose today and you win tomorrow and the moment you can't withstand open court embarrassment you can't practice law*. I don't think there is any lawyer that has been embarrassed like myself. *I hope and pray to die sticking to litigation alone. I don't do any solicitor job and I don't have the patience to share my fees with any bank manager or anybody.*

Can the setup of the justice system today be redesigned for better administration?

The problem today is that people will not listen to you until you die. There is only one way to decongest our court and unless that is done we are just speaking grammar. In America the system which we say we are copying every state has its own High Court, Court of Appeal, and Supreme Court. *In America, it is only constitutional matters that go to Supreme Court and even if you employ two hundred more justices of the Supreme Court of Nigeria they are not able to catch up with the volume of cases already before the court*

What is your say about the impasse between the Body of Benchers and the NBA?

The body of benchers is higher than any other legal body in the country. It is the highest body in the legal profession and there is no comparison and that should not be an issue for contention and every lawyer is subjected to the Body of Benchers. I was made a member in 2007 but was later removed. I am now a life bencher to the glory of God.

How can your new appointment as a life bencher significantly influence legal practice?

By the Grace of God and May God almighty give me the power to contribute to the development of the legal profession in Nigeria.

What do you want to be remembered for?

By the grace of God, I want to be remembered for being someone who lived his life faithfully and truthfully.

OUR MANDATE, OUR CASES:

FOIA Case Review and Procedures

IN REGISTERED TRUSTEE OF CITIZENS AWARENESS AGAINST CORRUPTION AND SOCIAL VICES INITIATIVE (CACASVI) V. PETROLEUM EQUALIZATION FUND PEF

CASE 1: (Suit No: FHC/ABJ/CS/52/2021)

The applicant by a letter dated 16th December 2020 sought for information and public records as part of the applicant's activities to review corruption and integrity index in public institutions in Nigeria. The Applicant wrote to the Respondent seeking to know the following;

a. Request for the information for a certified true copy of the nominal role, position, and salary

b. The certified true copy of approval for recruitment from 2015- 2020

c. A certified true copy of evidence of the advertisement of recruitment

d. A certified true copy of the waiver for recruitment from 2015-2020

A copy of the FOI letter conveying the request and a receipt stamp of the respondent on it was attached and marked as "Exhibit B" in the originating application. The Respondent denied the Applicant the aforesaid information. The applicant's deponent stated that the failure of the Respondent to release the needed information to the applicant has reduced the knowledge of the applicant on current affairs. At the hearing, the Respondent hinged their defence on its refusal to respond to the FOIA application on three grounds namely;

a. The name on the letterhead is different from the name on the suit

b. Disclosure of Respondent's nominal roll and salaries without the names of the employees violates the privacy of the employees of the applicant

c. That the Respondent is self-accounting and self-sustaining

d. Information sought is on the website of the National Salaries, Income, and Wages Commission

The Federal High Court of 22nd day of June 2021 through His Lordship, Justice A. I. Chikere, Judge held that;

"In the instant case, the applicant commenced the present action via originating summons..... It is improper to commence civil proceedings by Originating Summons where the facts are likely to be in dispute. There are a lot of facts that are in dispute. This is evident when the Respondent contends that amongst others that they were served with a letter requesting the information.

EDO STATE CIVIL SOCIETY ORGANIZATION (EDOCSO) & 2 ORS V. GOVERNMENT OF EDO STATE & ANOR

CASE 2: (Suit No: (B/80os/2018).

Importantly, the only issue raised in the preliminary objection in this is whether an originating process filed without an affidavit of non-multiplicity of action renders the suit incompetent. Unfortunately for the Respondent's counsel, the court found that the applicant filed non-multiplicity and attached it to the original copy of the process filed, so the objection collapsed on its face. Assuming but not conceding that the facts were contentious, the Court ought to raise the issue of commencement and request the parties to address him on it or order that the parties put their witness (es) in the box to demonstrate their evidence.

An application under FOIA is sui generis. Order of mandamus procedure under FOIA is by originating summons. By summary trial under FOIA, the court looks at the letter of request for information, the grounds for refusal, and other facts upon which the application is made. The issue for determination reads "Whether the information sought after by the applicant ought to be granted under FOIA 2011?" the court is then called to determine whether the materials sought were classified and not to determine the proprietary of the denial decision or unfounded objections. The discretion of the Court was not exercised judiciously

In 2015, World Bank and European Union signed MOU to fund State Employment and Expenditure for Results (SEEFOR) Project to the tune of 280 Million Dollars for 65 percent and 35 percent respectively. The project is to assist in road construction in four selected states in Niger Delta namely Edo, Rivers, Bayelsa, and Delta States.

Some of the roads constructed with the SEEFOR funds were recorded to be substandard e.g. Uwa Road off Sapele road, Benin City, Edo State.

In one of the beneficiary states – Edo State, Civil Society groups and activists sent a freedom of information request to access the records of the state as per information relating to the list of road construction/rehabilitation and school projects shortlisted to be executed under the SEEFOR Project across the state. The objective of the funding is to enhance opportunities for employment, access to socio-economic services, and improvement of public expenditure management systems in the state. Some of the roads constructed with the SEEFOR funds were recorded to be substandard e.g. Uwa Road off Sapele road, Benin City, Edo State.

Flowing from above, the Applicants on the 17th day of May 2018 sent a letter requesting information relating to the list of road construction/rehabilitation and school projects executed between 2016-2017 and a certified true copy of the bill of quantity drawings of the projects awarded. The Edo State government refused to make the information available, hence the suit. FOIA Counsel assisted the applicants to file a suit for judicial review. The applicants in their affidavit stated that public expenditure management systems of the state have not been improved despite the availability of the fund. The Respondents challenged the application on the ground that the applicant is not a juristic person registered with Cooperate Affairs Commission.

It is our submission that the Applicants are recognized by the Freedom of Information Act as juristic persons. Section 31 of the Freedom of Information Act 2011 defines persons to include a corporation sole and a body of persons whether corporate or incorporate acting individually or as a group. It is my submission that "any person" under the Act includes the applicants. The High Court in its decision held that;

> *"In this case, the 2nd Applicant, the Edo State Civil Society Organization (EDOCSO) has not shown that it is competent to bring this action having not demonstrated or established the capacity to bring this action in the name in which that action has been brought. I recognize that for the purpose of seeking information under the FOI Act from any government Agency, the issue of legal capacity may not necessarily be inquired into. However, when it results in an action in court, pursuant to the provisions of the FOI Act, the issue of legal capacity necessarily comes to the fore. I hold that the 2nd Applicant has not established its competence to sue or maintain this action and as such, its name must necessarily be struck out from the suit"*

COM. OMOBUDE AGHO & 2 ORS V. GOVERNMENT OF EDO STATE & 3 ORS

CASE 3: (Suit No: (B/81os/2018)

The Applicants sent a freedom of information request to the Accountant General of the state seeking the list of contracts awarded and executed since 2015 and Certified True Copies of the audited account of the Edo State government since 2016. Edo State government refused to make the information available. FOIA Counsel assisted the applicants to file a suit for judicial review at the High Court of Edo State. The court in delivering its judgment on the 19th day of December 2019 held that;

> *The case of Martin Alo v Speaker of Ondo State House of Assembly & Anor was delivered on the 27th day of March 2018 by the Akure Division of the Court of Appeal, while the decision of the Court of Appeal, Benin Division was delivered on the 28th March 2018, thus making it latter in time. And in consonance with the principle as laid down by the Supreme Court in the CARDOSO V DANIEL CASE, the authority that this court should follow. I hold therefore that the FOI Act is not applicable in Edo State".*

Where a lower court faced with two conflicting decisions of an appellate court can adhere to the latest decision is where the latter referred to the former before its conclusion as it can be safely assumed that the earlier decision was considered in the more recent decision. See INAKOJU v. ADELEKE (2007) 4 NWLR (PT. 1025) SC 423 pg. 748 – 749 paras. F-H. The decision of MARTIN ALO V SPEAKER OF ONDO STATE HOUSE OF ASSEMBLY & ANOR was later than EDOSACA v. AUSTIN OSAKUE in a day but the decision of Martin Alo was reached without reviewing the decision of EDOSACA.

High Courts have a choice to pick and choose which of the decisions to follow with a reason. My Lord, the trend is that where there are conflicting decisions of a Higher Court, the Lower Court picks any of the decisions and applies it accordingly. For instance in OLIKO & ANOR V. OKONKWO & ORS (1977) N.C.A.R. 368, the Court of Appeal unilaterally picked the decision of the Supreme Court in BABAJIDE V. ARIS & ANOR (1966) 1 ALL N.L.R 254 and dropped the decision in BOWAJE V. ADEDIWURA (1968) NMLR 350 at 357.

We submit further that where conflicting appellate decisions are independent as in this case, meaning the latter was not made in consideration of the former, the lower court has the discretion to pick and choose in the interest of justice. In G.T.B Plc v. Fadco Ind. Ltd (2007) 7 NWLR (pt. 1033) 307. The court held as follows:

> *"I am being faced with two conflicting decisions of the Supreme Court, one supporting the respondent, the other supporting the appellant. I am fully aware of the fact that I am bound by the decision of the Supreme Court but it is also the law that in this kind of situation, I am allowed to choose which to follow between the two decisions."*
>
> *See also MOHAMMED V MARTINS ELECTRONICS COMPANY LTD (2010) 2 NWLR (pt. 1179) 473 and ADEGOKE MOTORS V ADESANYA (1988) 2 NWLR (pt. 74) 108.*

IN EDOCSO & 3 ORS V. EDO STATE OIL & GAS PRODUCING AREA DEVELOPMENT COMMISSION (EDSOPADEC)

CASE 4: (Suit No: B/13/OS/2018)

The Applicant wrote to the Respondent seeking to know the List of police stations constructed and the location across Edo state, project stage of each of the project, certified true copy of contract award documents of police stations/posts and Certified True Copies of the payment schedule. The Respondent filed a counter affidavit challenging the applicability of the law to the sub-national in line with the decision of the appellate court. The High Court held that;

'I, therefore, agree with the submission of the learned counsel for the applicant that the law by the National Assembly in respect of archives and public records is only applicable to the public records and archives of the Federation whilst any law made by the House of Assembly of a State will apply only to the public records and archives in that State. As a result, I, therefore, opt to follow the decision in EDOSACA v OSAKUE. Consequently, I, therefore, hold that the FOIA 2011 is not applicable in Edo State. Accordingly, it is my view that the Applicant cannot rely on the said Act to seek the release of the documents sought from the Respondent which is an Edo State agency. I award a cost of 30, 000 in favor of the Respondent against the applicants"

IN EDO STATE AGENCY FOR THE CONTROL OF AIDS (EDOSACA) VS. COM. AUSTIN OSAKUE

CASE 5: (CA/B/469/2014)

Delivered on the 28th day of March 2018 and reported in (2018) 16 NWLR (Pt. 1645) 199. Before the High Court of Edo State, we filed an Originating Summons seeking for public disclosure of information relating to details of the revenue and expenditure of its agency between the periods of 2011-2013 to the applicants, information relating to:

- details of the subventions of the Edo State Government to its agency between the periods of 2011 – 2013 to the applicants,
- information relating to details of the grant-in-aid from corporate bodies and private donors to its agency between the periods of 2011-2013 to the applicants,
- details of the contracting firms that handled the contract of printing and supplies for the agency and the amount the contract was awarded which must be disclosed to the applicants,
- details of the documents detailing the criteria used to place an individual organization in the selection list for grants and the criteria used to remove an individual organization from the selection list for grants which must be disclose to the applicants,
- details of the current number of civil society groups on the selection list for grants and current number of civil society groups in Edo State on the list for grant which must be disclose to the applicants,
- details of the individual organization on the list and document showing that same have been forwarded to the donor be disclose to the applicants and details of the local and international donors from the year 2011 till date and the program and financial report sent to the donors which must be disclose to the applicants.

The High Court in its decision held that the failure of Respondent to disclose information requested by the applicants is illegal, oppressive, and vexatious. The Defendant appealed the decision. The Court of Appeal has this to say;

"In this regard, my own view is that the state is not a stooge to the Federal government but derives its own powers and strength to exist and manage its own affairs just like the federal government does from the constitution. It is only where there is a clash of interest in legislation that the law made by the state Assembly shall give way to that made by the National Assembly as per section 4(5) of the constitution and the authorities cited. All said and done, a perusal of the Freedom of information act will not in my humble view, project the intention that it is meant to cover the field. In other words, it is nowhere indicated or prescribed in the whole gamut of the Act that it shall apply both to the central and state government."

ALO MARTINS V SPEAKER OF ONDO STATE HOUSE OF ASSMEBLY & ANOR

CASE 6: (APPEAL NO: CA/AK/4/2017)

the Court of Appeal held on 27th March 2018 that'

> *"Public record is a matter listed in the 'Concurrent Legislative List'. The FOIA is to my mind binding on all States of the Federation by virtue of the age-log Doctrine of Covering the filed".*

REGISTERED TRUSTEE OF UNEMPLOYED YOUTHS INITIATIVE V. CODE OF CONDUCT BUREAU

CASE 7: (Appeal No: CA/B/524/2018)

filed an application under Originating Summons seeking the Court to interpret relevant provisions of the law. The applicant seeks a declaration that the 1st Defendant's register of officials' declarations must be made public on request by any person or group of persons immediately after public officials take the oath of office. The High Court struck out the action on the ground that the applicant is a busybody and has no locus in the reliefs sought. The case was filed on behalf of the applicant by FOI Counsel.

The appellant approached the Court of Appeal and the issues for determination were whether the locus standi of the appellant was established and whether by the combined interpretation of section 2 (4) of the Freedom of Information Act 2011 and Section 3 (a)

& (c) of Code of Conduct Bureau and Tribunal Act of 2004 assets declaration of public officers should be publicly available. The Court of Appeal allowed the appeal in part. It held that the locus standi of the appellant is established since it exhibited the certificate of registration and pleaded sufficient facts as per its interest in the promotion of the rule of law. As per third-party access to assets declaration of public officers, the Court of Appeal held that;

> *"Assets Declaration of Public Officers is to be verified by authority or person authorized and not any member of the public except under special circumstances. See Code of Conduct Bureau v Nwankwo (2018) LPELR 44762 (CA). Such special circumstances are yet to be spelt out by the National Assembly".*

IN REVENUE TRANSPRENCY AND ACCOUNTABILITY PROJECT (REVTRAP) & 2 ORS V. EDO STATE HOUSE OF ASSEMBLY

CASE 8: (Appeal No: CA/B/524/2018)

It is our submission that Par 3 (d) of the Code of Conduct Bureau and Tribunal Act 2004 LFN states that the Code of Conduct Bureau will obey "terms and conditions as the National Assembly may prescribe" and "ensure compliance with any law relating thereto". The National Assembly has promulgated the Freedom of Information Act of 2011. The long title of the Freedom of Information Act of 2011 reads "An Act to make public records and information more freely available, provide for public access to public records and information...." The National Assembly has since 2011 spelt out the terms and conditions for public access to public records including assets declaration of public officers.

Tthe applicant sought the following information;

- House resolution detailing the appropriation for Edo State Government house between the years 2011 and 2015
- House Resolution approving the expenditure of the Government for Edo University, Iyamho between the period of 2013-2016
- House resolution detailing the appropriation or monies approved for the Edo University, Iyamho between the period of 2013-2016

- Details of modalities put in place to monitor the World Bank loan taken by the Edo State Government
- Minutes of interim report of the House of Assembly or its Committees on the World Bank Loan by the House

FOIA judicial review was filed out of time with leave of court but at the end of the gearing, the court struck out the application for being statute barred haven been filed after 3 months as provided for by Public Officers Protection Law of Bendel State. The applicant approached the Court of Appeal (Appeal No: CA/B/367/2017) and raised issues before the court to determine whether the respondents, in this case, are entitled to protection under the Public Officers Protection Act of Bendel State. The Court of Appeal in its judgment of the 6th day of June 2022 held that;

> *"The issue herein is whether the Respondents are entitled to the protection under the Public Officers Protection Act. The law is settled beyond any doubt or peradventure that Public Officers Protection Act is an enactment that requires that suits against public officers must be filed within three months from the date of the accrual cause of action otherwise the protection against actions of public officers acting in the execution of public duties will intercede to protect such public officers from being prosecuted..... This law is designed to protect the officer who acts in good faith and does not apply to acts done in abuse of office and with no semblance of legal justification.*

Public institutions are under the law to disclose information in their custody as it is illegal for the legislature to conceal their proceedings. The Applicants never received written notice of the transfer of the application to other agencies of government. Importantly, the information requested is produced, collected, and processed in the House of Assembly with the use of public money and there are no alternative sources to the information sought. The Court decision relying on Public Officers Protection Law is not justifiable in a democratic setting. This is because the law is designed to protect the officer who acts in good faith and does not apply to acts done in abuse of office and with no semblance of legal justification.

Public institutions are under the law to disclose information in their custody as it is illegal for the legislature to conceal their proceedings.

IN FOIA COUNSEL V. CONTROLLER GENERAL OF PRISONS

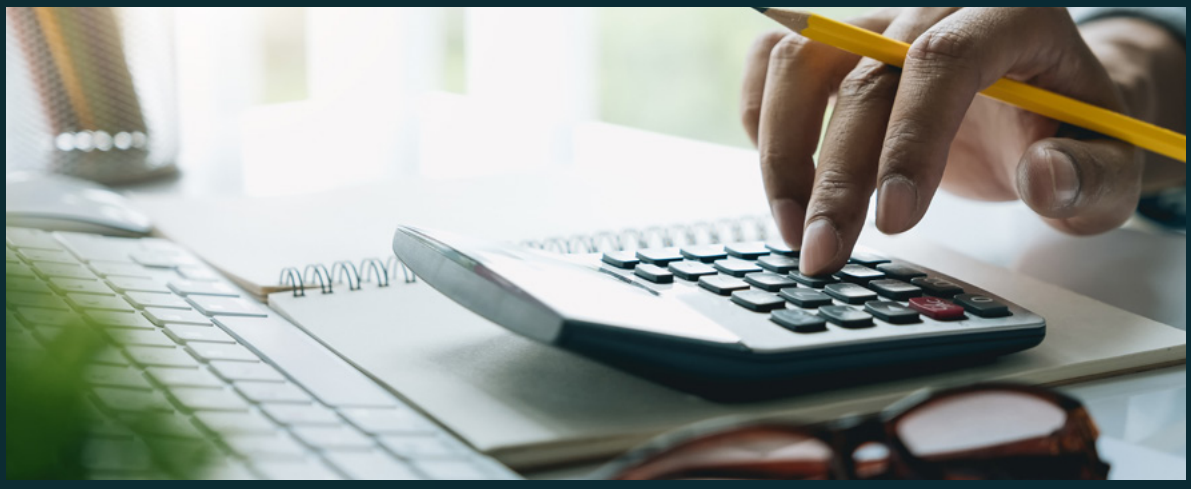
CASE 9: (Suit No: B/63/OS/2018)

The applicant commenced the action after a letter was sent to the Nigeria Prisons Service for records of foreign detainees in its custody but the agency refused to respond to the request. The applicant through its counsel President Aigbokan, Esq. sought an order of the court for the Service to release the aforementioned records or information. Mr. A.G Salihu, Esq. of the Nigeria Correction Service argued that the information sought is a breach privacy right of a third party, national security, and foreign affairs. He argued further that the information sought is foreclosed on these grounds. The court on its part refused to consider the exemptions relied on by the Service on the ground that the exemption ought to be raised first in a written notice made to the applicant. The Court held further that;

> *"Freedom of Information Act 2011 provides that Respondent must respond to the request for information made to it stating the reasons for refusal or denial within a specified period. And that where the respondent fails to supply the required information the applicant of the refusal in a written notice, it cannot so do before the court of law for the first time". The court added that for government to show that its denial falls within the statutory exemption, it must first inform the applicant in writing, and failure to disclose the reason for denial in the form of a letter is an outright abandonment of statutory exemption even where pleaded. Failure of which the court proceeded to declare that the refusal to disclose the information is null and void. The court relied on the dictum of Justice A. M. Liman in PRESIDENT AIGBOKHAN & 28 ORS v. NIGER DELTA DEVELOPMENT COMMISSION & 3 ORS (SUIT NO: FHC/B/CS/21/2015)*

IN PRESIDENT AIGBOKHAN & 28 ORS V. NIGER DELTA DEVELOPMENT COMMISSION & 3 ORS

CASE 10: (Suit No: B/63/OS/2018)



The applicants instituted an action against the Niger Delta Development Commission (NDDC) on the 19th day of February 2015 for failure to release certified true copies of documents detailing the expenditure of the Commission between the years 2012-2014. Other information sought includes a breakdown of the expenditure and the receipts of disbursement of the sum of Three Hundred and Eight Billion Naira appropriated to the Commission in the year 2014.

The Applicants amongst others sought a declaration that access to information is a fundamental right to freedom of expression and is embedded in section 39 (1) of the Constitution. The court on Wednesday 21st day of December 2016 in his judgment held that the action of the Commission denying the Applicants Certified True Copies of documents relating to the spending and newspapers publication, procurement journals, tender bids, receipts of payment, or other documents of the projects awarded by the Commission between 2012-2014 amounts to a breach of their fundamental right to information guaranteed under section 39 of the Constitution of Federal Republic of Nigeria 1999.

The court also ordered the Commission to disclose the amount of money transferred to the Commission from Ecological funds, Oil Producing and Extractive Industries, and International Oil Companies in Nigeria to the Commission between the years 2013-2014 and the breakdown and receipts of expenditure. The Court refused the Applicant's relief seeking a perpetual injunction restraining the National Assembly and the Minister of Finance from appropriating and issuing warrants or monies to the Commission pending the disclosure of the request by the applicants.

The Court held that a breach of the right to access information or records is a breach of the fundamental right to freedom of expression and information embedded in section 39 (1) of the Constitution. The Court refused the relief seeking it to appoint an independent auditor to audit the Commission and publish the audit report in social and mainstream media on the ground that the Freedom of Information Act 2011 did not provide for such a relief and the names of the auditor are not before the court to choose from and cannot take refuge under the inherent powers of the Court.

IN FOIA COUNSEL V. NPHDA

CASE 11: (FHC/B/CS/44/2021)

The Applicant applied to the agency for the following information viz copies of documents and information relating to the deed of partnership with African Vaccine Acquisition Task Team(AVATT), vaccine pre-order budget and facilitating bank, advance procurement guarantees, the quantity of Covid 19 vaccines ordered, the breakdown of international financial support for the vaccines supply to Nigeria and the minute of meetings of the NPHDA Board approving payment for the vaccines. The Agency sent its response and disclosed some of the records sought for The applicant proceeded for judicial review and the court in its decision delivered on the 17th day of May 2022 held that;

"In my view, it is only when a request or application is refused by a Public Institution that a cause of action accrues. Indeed in the peculiar circumstance, of this case, the information requested was supplied though outside the time protocol prescribed by the Act. In the instant case, as we have already seen, the Applicant has failed to establish any wrongdoing against the Respondent"

The appellant has raised disuse on appeal on whether the lower court has the power to review the reason (s) for a non-responsive request first revealed in a counter affidavit instead of a notice to the applicant as prescribed by section 7 of the Freedom Information Act 2011. The Respondent refused the applicant's request for access to records, for the appellant the law has been breached but for the Court the Respondent has tried with the disclosure, so the Court of Appeal is to decide whether there is room for partial compliance under the law.

Abubakar Malami. (2023, May 31). In Wikipedia. https://en.wikipedia.org/wiki/Abubakar_Malami

IN FOI COUNSEL V. AGF

CASE 12: (Suit N0: FHC/B/CS/103/18)

The office of the Attorney General of the Federation, AGF was visited with an application for records on local and international donations and grants to Open Government Partnership between 2015 and 2018. They said they never received foreign donations for the process. The irony is that the response came 10 weeks after, which is outside the response period. The Attorney General of the Federation is the nodal personality responsible for coordinating, capacitating, and setting the standard for MDAs. We are quite surprised at the screw-loose attitude of the AGF toward the implementation of the FOIA

The Federal High Court sitting in Benin City ordered the Honorable Attorney General of the Federation to disclose records of local and international financial donations and grants to the OGP process in Nigeria. The Attorney General of the Federation has denied in his letter to the applicant (Ref Number MJ/FOI/GEN/014/162) stated that "The OGP secretariat of Nigeria is not in possession of financial records and support of development partners towards OGP activities, meetings and travels. According to him "we only develop the work plan and present it to Development Partners' for implementation". Justice Adefumilayo A. Demi-Ajayi in its ruling held that request for information is to make public authority accountable and this could make the public better informed.

FOI COUNSEL MOURNS FREEDOM OF INFORMATION ACT AS IT MARKED 12 YEARS ON MAY 28TH, 2023

Nigeria became the fifth African nation with a freedom of information law on May 28, 2011 the seal was put on the bill. Although the FOI Act is not the only legislation that allows access to information in Nigeria, its emergence beams hope for administrative management of records and punishment for breaches. The Act is primarily to simplify public access to governance and to allow citizens to participate in government decisions. Ironically, the purposes for passing the Act are endangered because ministries, departments, and agencies (MDAs) have poor compliance records.

The Juristrust Centre for Socio-legal Research and Documentation in collaboration with support from Konrad Adenauer Stiftung (KAS) convened a workshop for judicial officers on the Freedom of Information Act 2011. FOI Counsel, SERAP, and the National Judicial Institute (NJI) amongst others facilitated the workshop.

The opening remarks were given by the Chief Justice of Nigeria Hon. Justice O. O. Ariwola GCON. The speakers include Prof. Muhammed Tawfiq Ladan the Director General of Nigeria Institute of Advanced Legal Studies (NIALS) who spoke on The General Framework and Basis of Freedom of Information Law. President Aigbokkhan of FOI Counsel spoke on the Request for Disclosure under the Freedom of Information Act and Official Records. Hon. Justice Ibrahim Buba Rtd. formerly of the Federal High Court spoke on Defences and requirements of a Freedom of Information Enforcement Action. On the second day of the workshop, Dr. Tony Ojukwu, SAN spoke on The Right to Privacy and the Right to know. The Chief Executive Officer of SERAP Kolawole Oluwadare spoke on freedom of Information litigation: Procedure and Remedial Measures. Hon. Justice M.L Shaiubu of the Court of Appeal spoke on the Judicial Review of Administrative Decisions in freedom of Information matters. Prof. Deji Adekinle, SAN the lead researcher of Juritrust made a presentation on Whistle Blower protection under the Freedom of Information Act. The last presentation was made by Prof. Jummai Audi chairperson of Nigeria Law Reform Commission. Those who attended are Justices of the Court of Appeal and judges of the State and Federal High Courts.

According to President Aigbokhan co-founder of FOI Counsel one of the facilitators of the workshop "MDAS are not obeying the provisions of the FOIA which directs disclosure, government agencies are defending suits. Payments of lawyers to defend FOI requests are topping MDAs budgets, when litigation ought to be the pill and not the snacks"

It was also observed by the delegates that records and information are now gotten to the throat of the court instead of administrative desks. The impact is that it turns the Act upside down and makes it combative. It was also observed that the deployment of technicalities by judges in interpreting the FOIA has frustrated the development and growth of the law. It was also reiterated that it is not enough to say MDAs responded to a request but the content of the response must reveal the exemption it relies on and the same must be placed side-by-side with the request submitted for the court to review, otherwise, the court is to hear the application summarily and grant the reliefs sought.

Event Gallery

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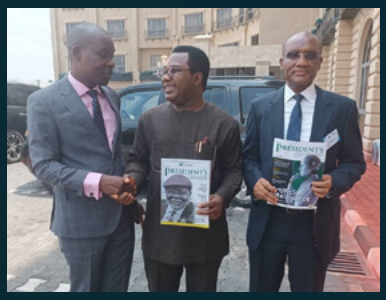

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1. President Aigbokhan of FOI COUNSEL making his presentation at the annual NJI & Juritrust organized training workshop for Judges on Freedom of Information Act 2011
2. President Aigbokhan with former President of Nigeria Chief Olusegun Obasanjo, GCFR
3. President Aigbokhan at the far right during the graduation ceremony at the Freedom Bible School
4. President Aigbokhan with some Judges after the training session on FOIA at an event organized by Juritrust and Korad Adenauer Stiftung at Johnwood Hotel, Abuja
5. With Mrs. Hajia Mariam Kawu former Director of Research National Judicial Institute (NJI)
6. Public Procurement Training for staff of at Ambrose Ali University, Ekpoma Edo State.
7. FOI Training for Persons living with disabilities (Kano State)

Endnotes

1* LLB, LLM AAU, Ekpoma, BL; ACI. Arb. He is the co-founder of FOIA Counsel]-a public interest law group that helps citizens to access public records through litigation and training. His email is president@foicounsel.com +2348032683434

1. Hilaire Barnett, (2001) Constitutional and Administrative Law, Cavendish P. 1013

2. Paul Craig, (1994) Administrative Law, London; Sweet & Maxwell, P. 201

3. Femi Falana, (2010), Fundamental Rights Enforcement in Nigeria, Lagos: Legal Text P. 53

4. Effiong v Ebong (2007) 28 WRN 71; Nemi v State (1994) 10 SCNJ 1

5. Al-Fayed v CIA, 254 F.3d 300, 301. 309 (DC Cir. 2001); Larsson v CIA, 843 F.2d. 1481, 1483 DC Cir. 1988)

6. See International Fishing Vessels Ltd v Minister for the Marine (No.2) (1951) 2 IR 93

7. Ogbubor, CA "Expanding the frontiers of Judicial Review in Nigeria: The Gathering Storm" (2011- 2012) 10 Nig. J.R.L @ 3

8Hillarie Barnett (supra) 1008

9. Ben Nwabueze (1977), Judicialism in the Commonwealth Africa (London .C. Hurst and co Ltd) p. 229.

10. Hillarie Barnett (supra) 1010

11. Sections 2 (6), 1(3) and 31 of FOIA 2011

12. Section 1(2) (Ibid)

13. Section 1(3) (Ibid)

14. Sections 5 and 11 (1) (a) of the ATIA of Canada

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16. sections 2 (6), 1 (3), and 3 of FOIA

17. section 39(2) of the Constitution of the Federal Republic of Nigeria 1999

18 Section 22 (1) of the Constitution of South Africa

19. DOJ v. Reporter for Freedom of Press, 489 US 749, 771-772 (1989) SC

20. Section 1 (CC) of the Constitution of South Africa

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22. NNPC v. Fawehinmi (1998) 7 NWLR (pt. 559) 598

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25. (1953) 14 W.A.C.A 325

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27. See sections 1 (3), 2 (6); 7 (1), and 20 of the Freedom of Information Act 2011

28. Section 23 of FOIA

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30. C.A, Ogbubor (Supra) 21

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32. Freedom of Information Act of Ireland 2014

33. MALLAK v. MINISTER FOR JUSTICE, EQUALITY (supra) 66

34. Sections 11, 12, 14, 16, 17, and 19 of FOIA 2011

35. Justice A.M. Liman in President Aigbokhan v Niger Delta Development Commission & 3 Ors (FHC/B/CS/21/2015) in a judgment delivered on 22/12/2016 @ 30

36. (Ibid) 30

37. See section 4 (b) of FOIA

38. Section 7 (2) of FOIA 2011

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40. Grand Systems Petroleum v Access Bank PLC (2015) 3 NWLR (Pt. 1446) CA 317

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43. Section 21 of the FOIA 2011