PROMOTING TRANSPARENCY AND ACCOUNTABILITY IN GOVERNANCE IN NIGERIA THROUGH THE FREEDOM OF INFORMATION ACT

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ABSTRACT
Transparency and accountability are the irreducible minimum of any democratic society in the world. Many democratic countries have now enacted national law that specifically guarantees the rights of citizens to access public information. Since independence on 1st October, 1960, Nigeria has been facing intractable problems of transparency and accountability in governance. As obtainable in all countries of the world, public officers in authority are trustees holding the power of their offices, the resources of the state, the perquisites of their offices and status in trust for the entire citizens and are therefore required to be open, transparent and accountable for their stewardship. In Nigeria, most activities of public institutions have been shrouded in secrecy. Where actions of public officers are hidden from the citizens, the citizens cannot know what is happening in the governance of their country. Information is an essential ingredient of transparency and accountability in governance and can be used by the citizen to scrutinize public institutions. This paper examines the Freedom of Information Act 2011 and concludes that if enforced, transparency and accountability in governance can be enhanced through the Act in Nigeria. In other words, access to information as guaranteed by the Act is one sure and best way to revolutionize and control public institutions so as to promote transparency and accountability in governance in Nigeria.

Keywords: Transparency, Accountability, Information, Governance, Public Institutions

INTRODUCTION
Just as every human being needs oxygen for survival every political system also needs oxygen for transparency and accountability in governance. The oxygen which every political system needs for transparency and accountability in governance is information. Information is defined by the Freedom of Information Act to include “all records held by government or public institution regardless of the form in which such information is stored, whether in form of document, tape, electronic recording, and so on, its source, whether the information was produced by the public institution itself or some other institution, and the data of production”. Transparency as an ethical concept connotes openness in public administration to the citizens both at the official and private levels. On the other hand, accountability is the act of being answerable and responsible to a party. It is a requirement for stewardship in which the steward justifies his stewardship to his principal.
Transparency and accountability in governance thrive on information in form of input and output. Where actions of those who govern in a country are hidden from the citizens, there can be no transparency and accountability in governance and the citizens cannot take a meaningful part in the affairs of the country. Information is not only a necessity for the citizens it is also an essential ingredient of transparency and accountability in governance.

Information also fosters transparency and accountability in governance by allowing citizens to scrutinize the actions and inactions of the government and serves as the basis for proper and informed debate of those actions or inactions. Freedom of information is not only for public hygiene, transparency and accountability in governance but also a moral and legal duty which any government owes its citizens. Transparency in governance is at the heart of political responsibility and one of the barometers for measuring it is the existence of freedom of information.

The issue of transparency and accountability in governance was raised in the United States prior to her enactment of the Freedom of Information Act in 1966, in the case of Barenblatt versus USA when Barenblatt challenged the Government of the United States for denial of information on the functioning of a Department of the Government. The Supreme Court of the USA held that: “The only constitutional way our Government can preserve freedom and itself is to leave its people the fullest possible freedom to praise, criticize or discuss as they see fit, all government policies and to suggest if they desire, that even its most fundamental postulates are bad and should be changed”.

In Nigeria, the root of lack of transparency and accountability in governance can be traced to the existence of unnecessary secrecy in governance legally fostered by the Official Secrets Act and Public Officers Protection Act which have shielded public institutions and public officers from disclosure of information and denied the citizens access to information about the acts of the government. Lack of transparency and accountability in governance thrives and flourishes in secrecy.

Lack of transparency can be costly both politically and economically. It is politically debilitating because it dilutes the ability of the democratic system to judge and correct government policies by cloaking the activities of special interests and because it creates rents by giving those with information something to trade. The economic costs of secrecy are staggering, affecting not only aggregate output but also the distribution of benefits and risks. The most significant cost is that of corruption which has adversely affected Nigeria’s political and economic development.

Freedom of information Act is a quest to push for increased transparency and accountability. Where there is lack of transparency and accountability, public institutions need secrecy to survive and usually justify their secrecy in the name of national security, public order and overriding public interest. Very often, these public institutions treat information as their property and the public have no right to know. The existence of unnecessary secrecy in government has also led to bureaucratic arrogance, corruption, high handedness and defective decision making.
Secrecy of public actions and inactions and lack of access to information by the citizens about operations or activities of government impede development and aggravate corruption. Chronologically, the first country in the world to enact the Freedom of Information Law is Sweden in 1766. In terms of statistics, Banisar (2011) estimates that, from 1766 when the first Freedom of Information Law was enacted to 2011, there are about sixty nine (69) countries that now have Freedom of Information Law in their statute books. Twenty five (25) of the sixty nine (69) countries with Freedom of Information Law are in Western Europe, United States, Canada, Japan, South Korea, Israel, Australia, and New Zealand. Of the remaining forty two (42) countries with Freedom of Information Law, twenty (20) of them are from the Central and Eastern Europe whose laws have all been passed since 1992. Finally, the remaining twenty two (22) are the developing countries of which ten (10) are in Latin America and the Caribbean (Mexico, Peru, Colombia, Panama, Belize, Jamaica, Trinidad and Tobago, Ecuador, Dominican Republic, and Antigua and Barbuda); six (6) are in Asia (Thailand, Philippines, India, Pakistan, Tajikistan and Uzbekistan); six (6) are in Africa (South Africa, Angola, Uganda, Zimbabwe, Ghana, and Nigeria); and two (2) are in the Middle East (Israel and Turkey).

PRELUDE TO NIGERIA’S FREEDOM OF INFORMATION ACT 2011
The clamour by Nigerians for freedom of information to promote transparency and accountability in governance dated back to the period of the British colonial government which was characterized by a dominant culture of secrecy. At that time, secrecy was the bureaucratic defensive mechanism. In a bid to fortify the culture of secrecy which enveloped its activities, the British colonial government enacted the Official Secret Acts, and Sedition and Seditious Meetings Act. On attainment of independence in 1960, the Nigerian political class that assumed power did not see the imperativeness to repeal these draconian laws. Rather, they promulgated more repressive laws in addition to Official Secrets Act and the Sedition and Seditious Meetings Act to silence the people who wanted to express their right to know, to have access to public information, and to demand transparency and accountability in governance. Cases of repression and clamp down on Nigerians who demanded the right to know, to access government information, and express their views about government activities are legion. For example, in African Press Limited versus The Queen, the appellant newspaper was held liable for the offence of sedition for divulging information on colonial administrative officers who carried out their duties in what the Newspaper described as “cowardly acts in secret” while pretending to be operating in the interest of Nigerians. Also, in Director of Public Prosecution versus Chike Obi, the defendant, a professor of Mathematics of international repute and public commentator was charged for sedition for circulating a pamphlet in which he demanded for transparency and accountability in governance. The intervention of the military in governance and its twenty-nine (29) years rule also witnessed secrecy in bureaucratic operations and steady consolidation of repression as well as clamp down
on Nigerians who demanded for good governance and transparency. A good number of Nigerians who were either detained or jailed for criticizing the government whose activities were shrouded in secrecy, denial of access to information, lack of transparency and accountability and corruption. Nigerians like Professor Wole Soyinka; Dr. Tai Solarin; Oyegbemi then of the Daily Sketch; Momoh then of the Sunday Punch; Adikwu a whistle blower in the Second Republic House of Representatives; and Tunde Thompson and Nduka Irabor both of them journalists, were either detained or jailed by government security agents for demanding transparency and accountability in governance.

The combined effects of the suppression and clamp down highlighted above was to prevent the citizens from exercising their freedom of expression and access to information and public records so that the culture of secrecy conducive to lack of transparency and accountability could continue to thrive in governance. However, in 1999, Nigeria returned to a democratically elected civilian government under the 1999 Constitution. Section 39 of the Constitution guarantees the people’s right to freedom of expression including freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Important as Section 39 of 1999 Constitution is, it does not provide detailed requirement for freedom of information which is very necessary for good governance. There was, therefore, a dire need to have a distinct Freedom of Information Act in Nigeria, a need which was vigorously pursued by many Nigerians cutting across all professions.

In 2002, the first Freedom of Information Bill, a private member Bill, was presented to the National Assembly. Unfortunately, the Bill could not go beyond the first reading as it was killed by some Nigerians who were afraid of its passage into law. The Bill was re-presented several times and was continuously returned or kept in the cooler. However, the combined and persistent efforts of the civil society organizations, human rights activists, the Press, members of the academia, public commentators and some members of the National Assembly culminated in the passage of the Bill into law in 2011 and accented to by former President Goodluck Jonathan.

Under the Freedom of Information Act, government documents are assumed to be public documents unless specifically exempt by the Act itself or the Constitution and individuals can access them without explaining why or for what purpose they need them. The Freedom of Information Act 2011 implies a change in the principle of the provision of government information from a ‘need to know’ basis to a ‘right to know’ basis”. It implies a change from passive citizenship to active citizenship in government business.

FUNDAMENTAL PRINCIPLES AND CONTENTS OF THE FOI ACT 2011

The principles underlying Nigeria’s Freedom of Information Act 2011 have been derived from national and international regimes which give effect to the right to freedom of information. These principles may be categorized into nine based on Article 19 Organization endorsed by the United Nations Commission on Human Right and summarized as follows: maximum disclosure, obligation to publish, promotion of open government, limited scope of exceptions, processes to
facilitate access, costs, open meetings, disclosure takes precedence, and protection for whistle blowers.

**Maximum Disclosure:** This principle simply means that the Act should be guided by maximum disclosure. The overriding goal of the Act is the implementation of maximum disclosure in practice. This is the cardinal principle around which the whole concept of freedom of information revolves. Public institutions have an obligation or duty to disclose information and every member of the public has a corresponding right to access information. The exercise of this right should not require individuals to demonstrate a specific interest in the information. Maximum disclosure as provided by the Act establishes a presumption that all information held by public institutions should be subject to disclosure and that this presumption may be overcome or defeated only in very limited circumstances. Public institutions must show that the information which they wish to withhold come within the scope of the limited regime of exceptions as provided by the Act.

Thus the onus is on a public institution which wishes to deny access to information to justify the refusal when such request for such information is made. The Act provides that an application for information shall not be denied where the public interest in disclosing the information outweighs whatever injury that disclosure would cause. It also provides that a public institution may deny an application for information that could reasonably be expected to facilitate the commission of an offence.

Section 8 (1) the Act provides that “where the government or public institution refuses to give access to a record or information applied for under this Act, or part thereof the public institution shall state in the notice given to the applicant the ground for the refusal, the specific provision of this Act that it relates to and that the applicant has a right to challenge the decision refusing access and have it reviewing by a court”. Subsection 2 of Section 8 of the Act further provides that “Any notification of denial of an application for information or records shall set out the names, designation and signature, of each person responsible for the denial of such application”. This subsection also provides that the government or public institution shall be required to indicate under Subsection 1 whether the information or record exists. Similarly, Subsection 4 provides that where the government or public institution fails to give access to information or record applied for under this Act or part thereof within the time limit set in this Act, the public institution shall, for the purpose of this Act, be deemed to have refused to give access.

Finally, Subsection 5 provides that where a case of wrongful denial or refusal of access is established, the defaulting officer or public institution shall on conviction be liable to a fine of N500, 000 (Five Hundred Thousand Naira). Furthermore, Section 25of the Act provides that the burden of establishing that the public institution is authorized to deny an application for information or any part thereof shall be on the public institution concerned. The combined effect of the provisions of Sections 8 and 25 is in harmony with principle number four on limited scope of exceptions and there is no doubt that successful enforcement of the provisions will enhance good governance.
**Obligation to Publish:** The basic tenet of this principle is that public institutions should be under an obligation to publish key or important information. In addition, the Freedom of Information Act establishes a general obligation to publish information, and also the key categories of information that must be published. Section 3 (3) of the Act clearly outlines the categories of information which public institutions in Nigeria must be under obligation to publish through various means including print, electronic and other online sources and at the offices of such public institutions. They include details of description of responsibilities and organization of the public institution, personnel, policies and plans, revenues and expenditures, contracts and agreements, minutes of meetings and open and secret files containing all official matters.

Section 11 of the Act clearly provides that it shall be a criminal offence punishable on conviction by a competent Court with a minimum of one year imprisonment for any officer or the head of any government of public institution to which this Act applies to willfully destroy any records kept in his/her custody or attempts to doctor or otherwise alter same before they are released to any person, entity or community applying for it. The criminalization of information destruction, falsification or alternation by any officer or public institution in this Act is a well conceived provision and will go a long way in enhancing good governance in Nigeria.

**Promotion of Open Government:** The Act requires public institutions to actively promote open government so that a culture of openness within government may be promoted. The Freedom of Information Law like any other legislation is not enacted to be kept in the cooler. The Act requires that adequate resources and attention be devoted to mitigate any constraint to free disclosure of information and raise literacy levels and the degree of awareness of the general public in order for the goal of the law to be achieved. Section 10(1) of the Act provides that every government or public institution shall ensure that it keeps every information or record about the institution’s operations, personnel, activities and other relevant or related information or records. Subsection (2) of the Section further provides that every government or public institution shall ensure the proper organization and maintenance of all information or records in its custody, in a manner that facilitates public access to such information or record under this Act.

**Limited Scope of Exceptions:** From the provisions of the Act it can be noticed that exceptions are clearly and narrowly drawn and subject to strict “harm” and “public interest” test. This is to say that any refusal to disclose information requested by an applicant is not justified unless that public institution in question can show that the information meets in strict sense the following three part tests: (i) the information must relate to a legitimate aim listed in the laws; (ii) disclosure must threaten to cause a substantial harm to that aim, and (iii) the harm to the aim must be greater than the public interest in having the information. This principle, therefore, applies to all branches of government (executive, legislative, and judicial arms) as well as to all functions of government, including for example functions of territorial security and defence. Thus, non-disclosure of information must be justified on a case by case basis.
Section 7 of the Act provides for extension of time limit when an application for information cannot be processed within the seven (7) days mandatory period. The Section provides that the public institution may extend the time limit set out in Section 5 or subsection 6(1) of the Act in respect of an application for a time not exceeding seven (7) days if: (a) the application is for a large number of records and meeting the original time limit would unreasonably interfere with the operations of the public institution; (b) consultations are necessary to comply with the application that cannot reasonably be completed within the originally stipulated time limits; by giving notice of the extension stating whether the extension falls under the circumstances set out in paragraphs (a) or (b), which notice shall contain a statement that the applicant has a right to have the decision to extend the time limit reviewed by a Court. These provisions are very useful safeguards for ease of access to information.

**Processes to Facilitate Access:** This fifth principle simply states that “request for information should be processed rapidly and fairly and an independent review of any refusal should be available”. The process for deciding upon request for information should be specified at three different levels, namely “within the public institution; appeals to an independent administrative body; and appeals to the courts.” In line with international best practices, the Act provides that where necessary, provision should be made to ensure full access to information for certain groups, for example, those who cannot read or write, those who do not speak the language of the record, or those who suffer from disabilities such as blindness. In this regard, Section 4 (3) of the Act specifically states that illiterate or disabled applicants who by virtue of their illiteracy or disability are unable to make an application for access to information or record in accordance with the provision of Subsection 4(1) above may make that application through a third party.

Section 2 of the Act provides for judicial review where applicants have been denied access to information. The Section specifically provides that an applicant who has been denied access to information, or a part thereof may apply to the Court for a review of the matter within thirty days after the public institution denies or is deemed to have denied the application or within such further time as the Court may either before or after the expiration of the thirty days fixed or allowed. Also, Section 22 the Act provides that an application made under Section 21 shall be heard and determined summarily. Section 23 on its own part provides that notwithstanding anything to the contrary contained in the Evidence Act, or any regulation made, the Court may, in the course of any proceedings before it arising from an application under Section 21 of this Act examine any information to which this Act applies, that is, under the control of a public institution, and no such information may be withheld from the Court on any ground.

Section 24 of the Act provides that in any proceedings before the Court arising from an application under Section 21, the Court shall take precaution, including when appropriate, receiving representations *ex parte* and conducting hearings in camera to avoid the disclosure by the Court or any person of any information or other material on a basis of which any public institution will be authorized to disclose the information applied for.
**Information Costs:** This principle states that individuals should not be deterred from making requests for information by excessive costs. The Act therefore provides for a minimal cost of gaining access to information held by the public institutions so as not to discourage potential applicants since the whole essence of Freedom of Information Act is to promote transparency and accountability in governance and open access to information. Access costs do vary from information to information depending on the volume of the information. Thus, costs are not at all deterrents to requests for information.

**Open Meetings:** This principle simply states that meetings of public institutions should be open to the public. In accordance with the basic principle that ultimate sovereignty resides with the people, this seventh principle is also a key to freedom of information regime. The Act provides that freedom of information includes the public’s right to know what the government is doing on its behalf and to participate in decision making processes. Thus, all meetings of governing bodies of public institutions are open to the public”. Governing bodies here refer to the teams of officers responsible for the exercise of decision making powers excluding those officers who perform advisory functions.

**Disclosure Takes Precedence:** The import of this principle is that laws which are not consistent with the Act and the Constitution regarding maximum disclosure should be amended or repealed. The Act by logical import prohibits the subjugation or subordination of the Act to any other legislation in existence dealing with publicly-held information except the Constitution. This is to break the yoke of the culture of secrecy which is prevalent in government so that it does not continue to thrive. It will also make public officers to be extremely cautious about requests for information in order to avoid any personal risk.

Section 26(1) of the Act provides that where a public institution denies an application for information, or a part thereof on the basis of a provision of this Act, the Court shall order the public institution to disclose the information or part thereof to the applicant under the following circumstance: if the Court determines that the institution is not authorized to deny the application for information; or where the institution is so authorized, but the Court nevertheless determines that the institution did not have reasonable ground on which to deny the application; or where the Court makes a finding that the interest of the public in having the record being made available is greater and more vital than the interest being served if the application is denied in whatever circumstance. Furthermore, Subsection 2 of Section 26 of this Act provides that the Court may make any order for disclosure of information in pursuance of this Section. The provisions of this Section 26 are in accord with this internationally recognized principle number eight which states that disclosure takes precedence. Thus, Section 26 of the Act will significantly promote transparency and accountability since publicly held information is subject to the principle underlying the freedom of information.

If the Freedom of Information Act is intended to open up public institutions so as to promote transparency and accountability in governance, it must not be pushed into obscurity. In this regard, Section 5 of the Act provides for the disclosure period. It provides that where
information is applied for under this Act, the public institution to which the application is made shall, subject to Sections 6, 7 and 8 of this Act, within seven (7) days after the application is received, (a) make the information available to the applicant; and (b) where the public institution considers that the application should be denied, the public institution shall give written notice to the applicant that access to all part of the information will not be granted, stating reasons for the denial, and the Section of this Act under which the denial is made. This provision for seven (7) days time limit within which public institution can delay before providing information to applicants is in accord with the internationally recognized time limit for granting or refusing application.

**Protection for Whistle Blowers:** This last principle states that individuals who release information on wrong doing in public institutions (whistle blowers) must be protected. Under the Act, “individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrong doing”. Wrong doing includes the commission of criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public institution, serious threat to health, safety or the environment whether linked to individual wrong doing or not. Whistle blowers who release information in a different way should benefit from protection as long as they acted in good faith and in the most reasonable belief that the information divulged was substantially true and disclosure of evidence of wrong doing. Section 28 of the Act provides that no civil or criminal proceedings shall lie against any person acting on behalf of a public institution (whistle blower), for the disclosure in good faith of any information, or any part thereof pursuant to this Act, for any consequences that flow from the disclosure, or for the failure to give any notice required under this Act.

**Bodies responsible for enforcement:** Besides the Court, the Act creates the enforcing rights in the Office of Attorney-General of the Federation. These enforcing rights are provided for in Section 30(1) of the Act. The Section provides that, “on or before February 1st of each year, each public institution shall submit to the Attorney–General of the Federation a report which shall cover the preceding fiscal year. The submission shall include: the number of determinations made by the public institution not to comply, the reasons for each of such determinations, number of appeals, the reason for the action upon each appeal and a description of whether a Court has upheld the decision. Other requirements are the number of applications for information pending before the public institution as of October 31st of the preceding year and the median number of days that such applications had been pending before the public institution as of that date. The number of applications for information received by the public institution and the number of applications unprocessed and the median number of days taken by the public institution to process different types of applications for information, the total amount of fees collected by the public institution to process such applications, and the number of full time staff of the public
institution devoted to processing applications for information, and the total amount expended by the public institution for processing such applications are also submitted.

Subsection 2 of Section 30 of the Act provides that each public institution shall make such report available to the public, among other means by computer and telecommunication, or if computer and telecommunications means have not been established by the public institution, by other electronic means. On the other hand, Subsection 3 of Section 30 of the Act provides that the Attorney-General of the Federation shall make each report, which has been submitted to him, available to the public in hard copies, online and also at a single electronic access point.

Furthermore, Subsection 4 of the same section provides that the Attorney-General of the Federation shall also notify the relevant committees of both the Senate and House of Representatives that have the oversight responsibility for freedom of information, not later than April of the year in which each report is issued, of the existence of such report and make it available to them in hard copies as well as by electronic means. Similarly, Subsection 5 (a) of Section 30 requires the Attorney-General of the Federation to develop reporting and performance guidelines in connection with reports required by this Section and to establish additional requirements for such reports as the Attorney-General of the Federation shall determine to be useful.

In addition, the Attorney-General of the Federation shall in the exercise of his oversight responsibility under this Act ensure that all institutions to which this Act applies comply with the provisions of the Act. He shall also submit to the National Assembly an annual report on a before April 1st of each calendar year which shall include for the previous calendar year a listing of the number of cases arising under this Act, the exemption involved in each case, the disposition of such cases, and the cost, fees, and penalties assessed.

RECOMMENDATIONS
The following recommendations are hereby suggested:

1. The political “will” used in the enactment of the Act should also be used in its implementation so that it will not be a law which is intended to promote transparency and accountability in governance but in actual practice pushing it into obscurity.

2. The general public should not see the Act as a “shallow law” distant from their eyes but should take advantage of it and exercise their information right so as to promote transparency and accountability in governance.

3. The thirty six States of the Federation should domesticate the law in their respective jurisdictions because successful enforcement of the Freedom of Information Act will require its adoption at all levels of government, that is, federal, state and local government levels.

4. The Judiciary should ensure the effective application of the Act because it provides for the first time ever, the legal framework governing both the standard by which
bureaucratic decisions are assessed and procedures by which the public can assert their right to know and access information on government operations.

5. The stakeholders who made inputs during the public hearing before the enactment should take painstaking interest in educating the public on the Act, because it is in accord with Freedom of Information Law of most countries.

6. A special public body responsible for receiving appeals and enforcing right to freedom of information should be created as an independent enforcement body because the Courts are already saturated with other litigations which will slow down appeals if appeals should go to them without an independent body in addition to the high monetary costs.

7. The Attorney-General of the Federation is too busy to be saddled with this additional responsibility assigned to his office by the Act. It is therefore recommended that an independent body should be created to enforce the Act from where final appeal may go to the Court for determination. In the alternative, the National Human Rights Commission should be given the responsibility to enforce the Act.

8. It is hereby recommended that the membership of such independent bodies should be made of up: Civil Society Groups, Nigerian Bar Association, Nigerian Union of Journalists, Nigeria Labour Congress, and Civil Service Union. The independence of the body should be guaranteed both formally and through the process by which the members of the body are appointed and confirmed by the National Assembly.

9. And finally, it is hereby recommended that the head of any public institution that fails or defaults to submit the report of proceedings of his institution in a particular year should be removed and prosecuted for criminal negligence.

CONCLUSION
The paper examines how transparency and accountability could be promoted through the Freedom of Information Act 2011 in Nigeria. The study stems from the secrecy and widespread corruption and lack of transparency and accountability which characterize the Nigerian public administration over the years. The paper argues that with the enactment of Freedom of Information Act in 2011, operations of public institutions must be opened up for external scrutiny and office holders must be vulnerable to outside criticism so that transparency and accountability may be promoted. The conclusion of the paper is that transparency and accountability can be promoted and enthroned through the cooperative effort and enforcement of the Act in which reliance should be placed on all stakeholders, namely, the public institutions, the press, civil society groups, the courts, human rights organizations, Office of the Attorney General of the Federation and all users of information. Also, for the Act to achieve the desired objectives, it is very necessary that the thirty six States of the Federation domesticate it in their respective jurisdiction.

REFERENCES


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