

FEDERAL MINISTRY OF JUSTICE

OPERATIONAL GUIDELINES

FOR

PUBLIC AUTHORITIES

**ON THE IMPLEMENTATION OF THE
FREEDOM OF INFORMATION ACT, 2011**

FREEDOM OF INFORMATION ACT, 2011

OPERATIONAL GUIDELINES FOR PUBLIC AUTHORITIES

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FREEDOM OF INFORMATION ACT, 2011

OPERATIONAL GUIDELINES FOR PUBLIC AUTHORITIES

1. Background

- (1) The Freedom of Information Act, 2011 (hereinafter referred to as "the Act") came into force on May 28, 2011. The main purposes of the Act are to –
 - (a) make public records and information more freely available;
 - (b) provide for public access to public records and information;
 - (c) protect public records and information to the extent consistent with the public interest;
 - (d) the protection of personal privacy;
 - (e) protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization; and
 - (f) establish procedure for the achievement of these purposes.
- (2) By virtue of section 1 of the Act, the right of any person to access or request for information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established. To this end, a public institution is obliged under section 2 of the Act to ensure that it records and keeps information about all of its activities, operations and businesses.
- (3) Section 30 (1) of the Act states that its provisions are to complement and not to replace the existing procedures for access to public records and information and is not intended to limit, in any, way access to those types of official information that are normally available to the general public.
- (4) The purpose of these Guidelines is to clearly define the duties of public institutions and officials, type of information covered by the Act, the right of the public to access such information or records, etc to enhance the smooth operations of the Act.

2. Public records and information covered by the Act

- (1) Under the Act, public record or information means a record in any form under the control of any public or private body relating to matters of public interest and include any –
 - (a) writing on any material;
 - (b) information recorded or stored on other devices; and any material subsequently derived from information so recorded or stored;
 - (c) label, marking or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means;
 - (d) book, card, form, map, plan, graph or drawing; and

- (e) photograph, film, negative, microfilm, tape, or other device in which one or more virtual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced.
- (2) Information covered under the Act is as detailed under section 2(3) of the Act.
- (3) For the avoidance of doubt, the Act does not cover published materials or materials available for purchase by the public, library or museum material made or acquired and preserved solely for public reference or exhibition purposes; or material placed in the National Library, National Museum and non public section of the National Archive.
- (4) The fact that any information in the custody of a public institution is kept by that institution under security classification or is classified document within the meaning of the official Secrets Act, does not however preclude it from being disclosed pursuant to an application for disclosure under the Act. See section 28 of the Act.

3. Obligations of Public Institutions

- (1) A public institution shall ensure that it records and keeps information about all its activities, operations and businesses and also ensure the proper organization and maintenance of all information in its custody, in a manner that facilitates public access to such information.
- (2) A public institution shall publish the following information –
 - (a) A description of the organization and responsibilities of the institution including details of the programmes and functions of each division, branch and department of the institution;
 - (b) A list of all -
 - (i) Classes of records under the control of the institution in sufficient details, and
 - (ii) ~~Manuals used by employees of the institution in administering or carrying out any of the programmes or activities of the institution;~~
- (c) A description of documents containing final opinions including concurring and dissenting opinions, as well as, orders made in the adjudication of cases;
- (d) Documents containing -
 - (i) substantive rules of the institution;
 - (ii) statements and interpretations of policy of the institution;
 - (iii) final planning policies, recommendations and decisions;
 - (iv) factual reports, inspection reports and studies whether prepared by or for the institution;
 - (v) information relating to the receipt or expenditure of public or other funds of the institution;
 - (vi) the names, salaries, titles and dates of employment of all employees and officers of the institution;
 - (vii) the right of the state, public institutions or of any private person

- (viii) the name of every official and the final records of voting in all proceedings of the institution;
- (e) A list of-
 - (i) files containing applications for any contract, permit, grants, licenses or agreements,
 - (ii) reports, documents, studies or publications prepared by independent contractors for the institution, and
 - (iii) materials containing information relating to any grant or contract made by or between the institution and another public institution or private organization;
- (f) The title and address of the appropriate officer of the institution to whom an application for information under this Act shall be sent.

(3) A public institution shall ensure that information referred to in paragraph 2 of this Guideline is periodically reviewed whenever changes occur and widely disseminated and made readily available to members of the public.

4 Record Keeping and maintenance

A public institution is required under section 9 of the Act to keep records and custody of its operations, personnel, activities and programmes in a manner that facilitates public access.

5 Training of officials on the right to information and on the effective implementation of the Act

A Public Institution is required under section 13 of the Act to provide adequate training for its officials on the right to access to information or records and for the effective implementation of the Act.

6 Submission of Reports to the Attorney – General of the Federation-

A Public Institution is required under section 29 of the Act to submit an annual report to the Attorney – General of the Federation showing *inter alia*:

- (a) the number of determination refusing applications made to it and reasons for such determination;
- (b) the scope of any information withheld;
- (c) the number of appeals made by persons under the Act and reasons for any action that results in a denial of information;
- (d) a description as to whether the court upheld the decision of the public institution to withhold information.
- (e) the number of applications for information pending before the public institution as at the 31st of October of the preceding year;
- (f) the number of days each application has been pending

- (g) the number of days taken to process different types of application for information or record;
- (h) the number of applications received by the public institution and the number processed
- (i) the total amount of application processing fees collected;
- (j) the number of staff devoted to processing applications for information; and
- (k) the total amount expended by the public institution for processing applications for information or records.

7. Role of the Attorney – General of the Federation

The Attorney – General shall –

- (a) ensure that all public institutions comply with the provisions of the Act;
- (b) develop and issue reporting and performance guidelines in connection with reports of public institutions under the Act;
- (c) receive reports submitted by public institutions under section 29 of the Act and make each report available to the public at a single electronic access point, online and in hard copies.
- (d) submit to the National Assembly an annual report on or before April 1 of each calendar year which shall include –
 - (i) efforts made by the Ministry of Justice to encourage public institutions to comply with the Act;
 - (ii) a listing of the number of cases arising under the Act for the previous calendar year;
 - (iii) the exceptions involved in each case;
 - (iv) the disposition of such cases, costs, fees and penalties assessed;
- (e) notify the Chairman and ranking minority member of –
 - (i) the Committee on Government Reform Oversight of the House of Representatives; and
 - (ii) the Committees on Government Affairs and the Judiciary of the Senate;

not later than April of the year in which such report is issued of the existence of the report and make it available to them in hard copies and by electronic means.

B. Obligations of Applicants

- (1) Any one can make a request for information under the Act
- (2) Any one making an application under the Act need not demonstrate any specific interest in the information applied for.
- (3) Any one making an application for information under the Act may be required to pay Fees which shall be limited to standard charges for duplication and transmission.
- (4) Any one making an application under the Act shall comply with any other requirements that may be prescribed from time to time by the Attorney – General of the Federation.

9. **Rights to access to information or records from public official, agency or institution**

- (1) The Act established the right of any person to access or request information in custody or possession of any public official, agency or institution whether or not contained in any written form not withstanding anything contained in any other Act, law or regulation.
- (2) The rights of access applies to information recorded in any form including but not limited to information held electronically, recorded on paper, sound and video recordings and hand written notes or comments.
- (3) Right of access also applies to information that is in storage, for example if it is in the public institutions filing systems or an out sourced records unit.

10. **Request for access to records**

- (1) Under the Act, any written request for recorded information under section 1 of the Act which is not routine business should be considered a freedom of information request.
- (2) Under subsection (3) of section 1 of the Act, a person entitled to information under the Act is also entitled to institute legal proceedings to compel any public institution to comply with the provisions of the Act.
- (3) Requests for information or records under the Act must be in writing stating –
 - (a) the name, address and signature of the Applicant;
 - (b) date of the application;
 - (c) a good description of information or record requested;
 - (d) the form the requested information may be transmitted; and
 - (e) any other information as may be considered appropriate from time to time.
- (4) Oral application may be made to an authorized official of a public institution who shall in turn reduce the request in writing and shall provide a copy of the application to the applicant.
- (5) Illiterates or disabled applicants may make applications under the Act through a third party.

11. **Time limit for responding**

The requested public institution is required to respond to the application within 7 days from the date of receipt of the request by –

- (a) making the requested information available to the applicant; or

- (b) where request is denied, to notify the applicant accordingly stating reasons for the denial and the section of the Act under which the denial is made.

12. Extension of time limit for granting or refusing application

The requested public institution may extend the time frame within which to respond to a request for a period not exceeding 7 days where –

- (a) Application is for a large number of records and can not be met within 7 days allowed by law,
- (b) Consultations are necessary to comply with the application and cannot be completed within the original 7 days

13. Refusing of Application

Where access to information is denied by a public institution, the applicant shall be notified accordingly stating –

- (a) grounds for the refusal; and
- (b) that the applicant has a right to challenge the decision refusal of access

14. Transfer of Application

- (i) Where a public institution is of the view that another public institution has greater interest over the requested information it may within 3 days but not later than 7 days after receipt of request, transfer the application to that public institution
- (ii) The institution transferring the application shall give written notice of the transfer to the applicant which notice shall contain a statement informing the applicant that such a decision to transfer the application can be reviewed by the court.
- (iii) Where an application is transferred under sub-paragraph 1 above, the application shall be deemed to have been made to the public institution to which it has been transferred on the day the public institution received it.
- (iv) For the purpose of paragraph (i) above, a public institution has "greater interest" if-
 - (a) the information was originally produced in or for the institution,
 - (b) in case of where information was not originally produced in or for the institution, the institution was the first public institution to receive the information.

15. Protection of Public Officers

Section 27 of the Act protects any public officer or any person acting on behalf of a public institution from civil or criminal proceedings for the disclosure in good faith of any information against consequences flowing from the disclosure of such information.

16. Exceptions

- (1) The Act exempts a public institution from disclosing information where –
- (a) the information or records may be injurious to the conduct of international affairs and the defence of the Federal Republic of Nigeria
 - (b) the information contains records compiled for administrative enforcement proceedings or law enforcement purposes to the extent that the disclosure would –
 - (i) interfere with pending or actual law enforcement proceedings
 - (ii) interfere with pending administrative enforcement ;
 - (iii) deprive a person of fair trial or impartial hearing;
 - (iv) disclose identity of a confidential source;
 - (v) constitute invasion of personal privacy; and
 - (vi) obstruct ongoing criminal investigation
 - (c) the information could reasonably be expected to facilitate the commission of an offence.
 - (d) the information contains personal information maintained with respect to clients, patients, students, residents, employees, etc unless –
 - (i) the individual to whom it relates consents to the disclosure; or
 - (ii) the information is publicly available; or
 - (iii) the disclosure will be in the public interest which outweighs the protection of the privacy of the individual to whom the information relates.
 - (e) ~~the information contains trade secrets and proprietary information which are privileged or confidential and which could reasonably be expected to –~~
 - (i) cause harm to the interests of a third party;
 - (ii) interfere with the contractual or other negotiations of a third party; and
 - (iii) frustrate procurement or give an advantage to any person
 - (f) the information is subject to privileges such as legal practitioner/client , health workers/patient, journalism confidentiality etc;
 - (g) the information contains course or research materials prepared by faculty members, and
 - (h) the information pertains to test questions, scoring keys, examination data, etc.

- (2) An application for information shall not be denied where the public interest in disclosing the information outweighs whatever injury that disclosure would cause.
- (3) Where the requested information is exempted from disclosure, a public institution may disclose any part that does not contain such exempted information.
- (4) A public institution may where appropriate refuse requests for information that are vexatious or repeated.

17. Offences and Penalties

- (a) An officer or head of any public institution that willfully destroy, or attempt to doctor or alter any record kept in his custody, before they are released to the requester commits an offence and is liable on conviction to 1 year imprisonment.
- (b) A public officer or institution who wrongfully withhold information commits an offence under the Act and shall be liable on conviction to a fine of N500,000.00

18. Judicial Review

- (a) Any applicant who has been denied access to information by a public institution may apply to court for a review within 30 days after the denial and the application shall be heard and determined summarily.
- (b) In any legal proceedings, the burden of establishing that the public institution is authorized to deny an application for information or part thereof shall be on the concerned public institution.
- (c) The Court may order the disclosure of information where the court is satisfied that the institution is not authorized to deny the disclosure of the requested information.

THESE GUIDELINES ARE ISSUED BY THE HONOURABLE ATTORNEY – GENERAL OF THE FEDERATION AND MINISTER OF JUSTICE, THISOF 2011.

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