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The following is published as Supplement to this *Gazette*:

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HB 22	A Bill for an Act to make Public Records and Information more freely available, Provide for Public Access to Public Records and Information, Protect Public Records and Information to the Extent consistent with the Public Interest and the Protection of Personal Privacy, Protect Serving Public Officers from Adverse consequences for Disclosing certain kinds of Official Information without Authorization and Establish Procedures for the Achievement of those purposes; and Related Purposes hereof	C277-C298

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FREEDOM OF INFORMATION BILL, 1999
ARRANGEMENT OF CLAUSES

CLAUSES:

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H.B.22

A BILL

FOR

AN ACT TO MAKE PUBLIC RECORDS AND INFORMATION MORE FREELY AVAILABLE, PROVIDE FOR PUBLIC ACCESS TO PUBLIC RECORDS AND INFORMATION, PROTECT PUBLIC RECORDS AND INFORMATION TO THE EXTENT CONSISTENT WITH THE PUBLIC INTEREST AND THE PROTECTION OF PERSONAL PRIVACY, PROTECT SERVING PUBLIC OFFICERS FROM ADVERSE CONSEQUENCES FOR DISCLOSING CERTAIN KINDS OF OFFICIAL INFORMATION WITHOUT AUTHORIZATION AND ESTABLISH PROCEDURES FOR THE ACHIEVEMENT OF THOSE PURPOSES; AND RELATED PURPOSES HEREOF

Sponsored by: DR. JERRY SONNY UGOKWE – *Representing Idemili North/
South Federal Constituency of Anambra State*
HON. TONY ANYAWU,
HON. NDUKA IRABOAR

[]

Commence-
ment.

Short Title.

1. 1. This Act may be cited as the Freedom of information Act, 1999.
2. 2. In this Act, unless the context otherwise requires –
3. “Court” means as State High Court where the official information in
4. question is kept by a local or State government institution, and the Federal
5. High Court where the official information in question is kept by a Federal
6. government institution;
7. “Foreign State” means any State other than the Federal Republic of
8. Nigeria;
9. “Public/Government Institution” means any legislative, executive,
10. judicial, administrative or advisory body of the Federal, State and Local
11. Governments, boards, bureaux, committees or commissions of the State,
12. and any subsidiary body of those public bodies including but not limited
13. to committees and sub-committees which are supported in whole or in
14. Part by tax revenue or which expends tax revenue and private bodies
15. carrying out public functions.
16. “Public record or document” means a record in any form having been
17. prepared, or having been or being used, receive, possessed or under the

1 control of any public body or private bodies relating to matters of public
2 interest and includes-

3 (a) any writing on any material;

4 (b) any information recorded or stored on other devices; and any material
5 subsequently derived from information so recorded or stored;

6 (c) any label, marking, or other writing that identifies or describes
7 anything of which it forms part, or to which it is attached by any means;

8 (d) any book, card, form, map, plan, graph, or drawing;

9 (e) any photograph, film, negative, microfilm, tape, or other device in
10 which one or more visual images are embodied so as to be capable (with or
11 without the aid of some other equipment) of being reproduced;

12 “Minister” means the Minister charged with responsibility for
13 information.

14 “Person” includes a corporation sole, and also a body of persons,
15 whether corporate or incorporate; acting individually or as a group

16 “Personal information” means any official information held about an
17 identifiable person; but does not include information that bears on the
18 public duties of public employees and officials; and

19 “Public Officer” means a person who exercise or formerly exercised, for
20 the purpose of the government, the functions of any office or employment
21 under the State.

Right of
access to
records.

22 3.-(1) Subject to the provisions of this Act but notwithstanding anything
23 contained in any other Act, Edict, Law, or Regulation, every person whether or
24 not that person is a citizen of the Federal Republic of Nigeria, has a legally
25 enforceable right to, and shall, on request, be given access to any record under
26 the control of a government or public institution.

27 (2) An applicant herein need not demonstrate any specific interest in the
28 information being requested for.

29 (3) For the purpose of this Act, any record requested under this Act that
30 does not exist but can, subject to such limitations as may be prescribed by

1 regulation, be produced from a machine, readable record under the control of a
2 government and/or public institution using computer hardware and software
3 normally used by the government and or public institution shall be deemed to
4 be a record under the control of the government and/or public institution.

5 **4.-(1)** The head of every government and or public institution to which
6 this Act applies shall cause to be published in the Federal *Gazette* at least once
7 every year-

Information
about
government
Institution.

8 (a) a description of the organisation and responsibilities of the
9 institution including details of programmes and functions of each division,
10 branch and department of the institution;

11 (b) a description of all classes of records under the control of the
12 institution in sufficient detail to facilitate the exercise of the right of access
13 under this Act;

14 (c) a description of all manuals used by employees of the institution in
15 administering or carrying out any of the programmes or activities of the
16 institutions;

17 (d) a description of documents containing final opinions including
18 concurring and dissenting opinions as well as orders made in the
19 adjudication of cases;

20 (e) a description of documents containing substantive rules of the
21 institution;

22 (f) a description of documents containing statements and interpretations
23 of policy which have been adopted by the institution;

24 (g) a description of documents containing final planning policies,
25 recommendations, and decisions;

26 (h) a description of documents containing factual reports, inspection
27 reports, and studies whether prepared by or for the institution;

28 (i) a description of documents containing information relating to the
29 receipt or expenditure of public or other funds of the institution;

30 (j) a description of documents containing the names, salaries, titles, and

1 dates of employment of all employees and officers of the institution;

2 (k) a description of documents containing opinions concerning the rights
3 of the State, the public, a sub-division of the State or a local government of
4 any private person;

5 (l) a description of documents containing the name of every official and
6 the final records of voting in all proceedings of the institution;

7 (m) a description of files containing applications for any contract, permit,
8 grant, or agreement.

9 (n) a list of reports, documents, studies, or publications prepared by
10 independent consultants or other independent contractors for the
11 institution;

12 (o) a description of materials containing information relating to any grant
13 or contract made by or between the institution and another government and/
14 or public institution or private organization; and

15 (p) the title and address of the appropriate officers or employees of the
16 institution to whom requests for access to records under this Act should be
17 sent, provided that the failure of any government and/or public institution to
18 publish any information required to be published under this sub-section
19 shall not prejudicially affect the right of access to public records and
20 information in the custody of such government and/or public institution as
21 provided for under this Act.

22 (2) Any person entitled to the right of access conferred by this Act shall have
23 the right to institute proceedings in a Court to compel the head of any government
24 institution and/or public body to comply with the provisions of this section;

25 (3) The government and or public institutions to which this Act applies are all
26 authorities whether executive, legislative or judicial agencies, ministries, and extra-
27 ministerial departments of the Federal Government and of all State and local
28 governments, together with all corporations established by law and all companies
29 in which a Federal, State or Local Government authority has a controlling interest
30 and also private companies performing public functions.

1 **5.** A request for access to a record under this Act shall be made in writing
2 to the government and or public institution that has control of the record and
3 shall provide sufficient detail to enable an experienced employee of the institution
4 with a reasonable effort to identify the record.

Request for
access to
records.

5 **6.** Where access to a record is requested under this Act, the head of the
6 government and/or public institution to which the request is made shall, subject
7 to Sections 7, 8, and 10, within seven days after the request is received.

Notice where
Access to
records are
requested.

8 (a) give written notice to the person who made the request as to whether
9 or not access to the record or a part thereof will be given; and

10 (b) if access is to be given, give the person who made the request
11 access to the record or part thereof.

12 **7.-(1)** Where a government and or public institution receives a request
13 for access to a record under this Act, and the head of the institution considers
14 that another government and/or public institution has a greater interest in the
15 record, the head of the institution to which the request is made may, subject to
16 such conditions as may be prescribed by regulation, within three days after the
17 request is received, transfer the request, and if necessary, the record to the
18 other government and/or public institution, in which case the head of the
19 institution transferring the request shall give written notice of the transfer to
20 the persons who made the request, which notice shall contain a statement
21 informing the person who made the request that such decision to transfer the
22 request can be reviewed by a Court.

Transfer of
request.

22 (2) For the purpose of Section 6, where a request is transferred under sub-
23 section (1) of this section, the request shall be deemed to have been made to the
24 government and or public institution to which it was transferred on the day the
25 government and/or public institution received it.

26 (3) For the purpose of sub-section (1), a government and/or public
27 institution has a greater interest in a record if-

28 (a) the record was originally produced in or for the institution; or

29 (b) in the case of a record not originally produced in or for a government
30 and or public institution, the institution was the first government and/or

1 public institution to receive the record or a copy thereof.

Extension of
Time limits.

2 **8.**-(1) The head of a government and or public institution may extend the
3 time limit set out in Section 7 or sub-section 7 (1) in respect of a request under this
4 Act for a reasonable period of time, and in any event not exceeding seven days,
5 if-

6 (a) the request is for a larger number of records or necessitates a research
7 through a large number of records and meeting the original time limit would
8 unreasonably interfere with the operations of the government and/or public
9 institutions; or

10 (b) consultations are necessary to comply with the request that cannot
11 reasonably be completed within the original time limit,
12 by giving notice of the extension stating whether the extension falls under
13 the circumstances set out in paragraph (a) or (b), which notice shall contain
14 a statement that the person has a right to have the decision to extend the
15 time limit reviewed by a Court.

Where access
Is refused.

16 **9.**-(1) Where the head of a government and or public institution refuses to
17 give access to a record requested under this Act, or a part thereof, the head of the
18 institution shall state in the notice given under section 6 (a) the specific provision
19 of this Act on which the refusal was based and shall state in the notice that the
20 person who made the request has a right to have the decision refusing access
21 reviewed by a Court.

22 (2) Any notification of denial of any request for records shall set forth the
23 names of each person responsible for the denial of such request.

24 (3) The head of a government and or public institution shall be required to
25 indicate under sub-section (1) whether a record exists.

26 (4) Where the head of a government and or public institution fails to give
27 access to record requested under this Act or a part thereof within the time limits
28 set out in this Act, the head of the institution shall, for the purposes of this Act,
29 be deemed to have refused to give access.

1 **10.**-(1) A government or public regulations shall provide that-

Fees etc, and
Action for
waivers.

2 (a) fees shall be limited to reasonable standard charges for document
3 search, duplication, review and transcription where necessary, when
4 records are requested for commercial use;

5 (b) fees shall be limited to reasonable standard charges for document
6 search, duplication, review and transcription where necessary, when
7 records are not sought for commercial use and the request is made by an
8 educational or noncommercial, scientific research, or a representative of
9 the news media; and

10 (c) for any request not described in (a) or (b) fees shall be limited to
11 reasonable standard charges for document search, duplication, review
12 and transcription where necessary.

13 (2) Document shall be furnished without any charge or at a charge reduced
14 below the fees established under Section 11 (1) (b) if disclosure of the
15 information is in the public interest because it is likely to contribute significantly
16 to public understanding of the operations or activities of the government and
17 is not operations or activities of the government and is not primarily in the
18 commercial interest of the requester.

19 (3) Fees schedules shall provide for the recovery of only the direct costs
20 of search, duplication, reproduction, review or transcription where the record
21 being requested under this Act is produced as a result of the request from a
22 machine readable record under the control of a government and/or public
23 institution.

24 (4) Review costs shall include only direct costs incurred during the
25 initial examination of a document for the purposes of determining whether the
26 documents must be disclosed under this section and for the purpose of
27 withholding any portions exempt from disclosure under this Act.

28 (5) Review costs may not include any costs incurred in resolving issues
29 of law or policy that may be raised in the course of processing a request under
30 this section.

- 1 (6) No fee may be charged by any government or public institution
2 (a) if the costs of routine collection and processing of the fee are likely to
3 equal or exceed the amount for the fee; or
4 (b) for any request described in Section 10(1)(a)(b) or (c) for the first two
5 hours of search time or for the first one hundred pages of publications;
- 6 (7) No government or public institution may request advance payment of any
7 fees unless the requester has previously failed to pay fees in a timely fashion
8 (8) Nothing in this Act shall supercede fees chargeable under a statute
9 specifically providing for setting the level of fees for particular types of records.
10 (9) In any action by a requester regarding the waiver of fees under this
11 section, the court shall determine the matter de novo, provided that court's Fees
12 review of the matter shall be limited to the record before the Government of Public
13 Institution.
- Destruction
or
falsification
of record.
- 14 **11.** It shall be a criminal offence punishable on conviction with 3 years
15 imprisonment for any officer or the head of any government and/or public institution
16 to which this Act applies who tries to either willfully destroy any records kept in
17 his/her custody or attempts to doctor or otherwise alter same before they are
18 released to any person, entity or community requesting for it.
- Access
records
- 19 **12.-(1)** Access to a record shall be given to the person requesting such
20 access in one or more of the following forms:
21 (a) a reasonable opportunity to inspect or copy the record;
22 (b) in the case of a record that is an article or thing from which sounds or
23 visual images are capable of being reproduced, the making of arrangements
24 for the person to hear or view these sounds or visual images;
25 (c) in the case of a document by which words are recorded in a manner in
26 which they are capable of being reproduced in the form of sound or which
27 words are contained in the form of shorthand writing or in codified form,
28 provision by the government and/or public institution of a written transcript
29 of the words recorded or contained in the document.
30 (2) Subject to sub-section (3) of this section, where the person requesting

1 access has requested such access in a particular form, access shall be given in
2 that form.

3 (3) If the giving of access in the form requested by the person-
4 (a) would interfere unreasonably with the operations of the government
5 and or public institution, or the performance by any officer or employee
6 thereof of his functions,
7 (b) would be detrimental to the preservation of the record or, having
8 regard to the physical nature of the record, would not be appropriate; or
9 (c) would, but for the provisions of this Act, involve an infringement of
10 copyright (other than copyright owned by the Federal Republic of Nigeria,
11 a state, or a local government, or a government and or public institution
12 thereof) subsisting in matter contained in the record being matter that
13 does not relate to the affairs of a government and/or public institution,
14 access in that form may be refused and access shall be given in another
15 form.

16 (4) Subject to sub-section 12 (1), where a person requests access to a
17 record in a particular form and, for a reason specified in sub-section (3) hereof,
18 access in that form is refused but access is given in another form, the person
19 requesting access shall not be requested to pay a charge in respect of the
20 provision of access to the record that is greater than the charge that he would
21 have been required to pay if access had been given in the form requested.

22 **13.** Where a request is made a government and or public institution and-

23 (a) it appears from the request that the desire of the person requesting
24 access is for information that is not available in discrete form in documents
25 of the government and/or public institution, and

26 (b) the government and or public institution could produce a written
27 document containing the information in discrete form by-

28 (i) the use of a computer or of other equipment that is ordinarily
29 available to the government and/or public institution for retrieving or
30 collating stored information, or

Where
information
is not
available in
discrete form.

1 (ii) the making of a transcript from a sound recording held in the
2 government and or public institution,
3 the government and/or public institution shall deal with the request as if it
4 were a request for access to a written document so produced and containing
5 that information, and, for that purpose, this Act applies as if the government
6 and or public institution had such a document in its possession.

International
affairs and
defence.

7 **14.-(1)** The head of a government and or public institution may refuse to
8 disclose any record requested under this Act that contains information the
9 disclosure of which may be injurious to the conduct of international affairs and the
10 defence of the Federal Republic of Nigeria.

11 (2) However, such right to refuse the disclosure of any record requested by
12 an applicant ceases to exist where the interest of the public in having the said
13 record being made available to them outweighs whatever injury disclosing such
14 records would have to the aforementioned interests.

Law
enforcement
and
investigations.

15 **15.-(1)** The head of a government and or public institution may refuse to
16 disclose any record requested under this Act that contains;

17 (a) records compiled by any government and/or public institution for
18 administrative enforcement proceedings and any law enforcement or
19 correctional agency for law enforcement purposes or for internal matters of a
20 government and/or public institution, but only to the extent that disclosure
21 would:

22 (i) interfere with pending or actual and reasonably contemplated law
23 enforcement proceedings conducted by any law enforcement or correctional
24 agency;

25 (ii) interfere with pending administrative enforcement proceedings
26 conducted by any government and/or public institution;

27 (iii) deprive a person of a fair trial or an impartial hearing;

28 (iv) unavoidably disclose the identity of a confidential source

29 (v) constitute an invasion of a personal privacy under section 19 of this
30 Act, however, where the interest of the public would be better served by

1 having such record being made available, this exemption to disclosure
2 shall not apply.

3 (vii) obstruct an ongoing criminal investigation.

4 (b) information the disclosure of which could reasonably be expected to
5 be injurious to the security of penal institutions.

6 (2) The head of a government and or public institution may refuse to
7 disclose any record requested under this Act that contains information that
8 could reasonably be expected to facilitate the commission of an offence.

9 (3) For the purposes of paragraph (1) (a), "Investigation" means an
10 investigation that-

11 (a) pertains to the administration or enforcement of any enactment.

12 (b) is authorized by or pursuant to any enactment.

13 **16.** The head of a government and or public institution may refuse to
14 disclose any record requested under this Act that contains;

15 (a) trade secret or financial, commercial, or technical information
16 that belongs to the government of the Federal Republic of Nigeria or any
17 State or Local Government thereof, and has substantial economic value or
18 is likely to have substantial value;

19 (b) information the disclose of which could reasonably be expected
20 to prejudice the competitive position of a government and/or public
21 institution;

22 (c) scientific or technical information obtained through research by an
23 officer or employee of a government and/or public institution, the disclosure
24 of which could reasonably be expected to deprive the officer or employee
25 of priority of publication; or

26 (d) information the disclosure of which could reasonably be expected to
27 be materially injurious to the financial interest of the Federal Republic of
28 Nigeria, or any State or Local Government thereof, or the ability of the
29 Federal Government thereof, or the ability of the Federal Government, a
30 State or Local Government to manage its economy, or could reasonably be

Economic
interest of
the Federal
Republic of
Nigeria

1 expected to result in an undue benefit to any person including but not limited
2 to the following information-

- 3 (I) the currency, coinage or legal tender of the Federal Republic of Nigeria,
- 4 (ii) a contemplated change in the rate of banks interest or in government
5 borrowing;
- 6 (iii) a contemplated change in tariff rates, taxes, duties or any other
7 revenue sources,
- 8 (iv) a contemplated change in the conditions of operation of financial
9 institutions; and
- 10 (v) a contemplated sale or purchase of securities or of foreign or Nigerian
11 currency.

Personal
Information.

12 **17.-(1)** Subject to subsection (2), the head of a government and or public
13 institution shall refuse to disclose any record requested under this Act that contains
14 personal information. Information exempted under this subsection shall include:

- 15 (I) files and personal information maintained with respect to clients,
16 patients, residents, students, or other individuals receiving social, medical,
17 educational, vocational, financial, supervisory or custodial care or services
18 directly or indirectly from federal agencies or government and or public
19 institutions:
- 20 (ii) personnel files and personal information maintained with respect to
21 employees, appointees or elected officials of any government and/or public
22 institution or applicants for such positions;
- 23 (iii) files and personal information maintained with respect to any
24 applicant, registrant or licensee by any government and/or public institution
25 cooperating with or engaged in professional or occupational registration,
26 licensure or discipline;
- 27 (iv) information required of any tax payer in connection with the
28 assessment or collection of any tax unless disclosure is otherwise requested
29 by state statute; and
- 30 (v) information revealing the identity of persons who file complaints

1 with or provide information to administrative, investigative, law
2 enforcement or penal agencies.

3 (2) The head of a government and or public institution may disclose any
4 record requested under this Act that contains personal information if-

5 (a) the individual to whom it relates consents to the disclosure;

6 (b) the information is publicly available.

7 (3) Where disclosure of any information referred to in this section would
8 be in the public interest, and if the public interest in the disclosure of such
9 information clearly outweighs the protection of the privacy of the individual to
10 whom such information relates, the head of the government and/or public
11 institution to whom a request for disclosure is made shall disclose such
12 information.

13 **18.-(1)** Subject to this section, the head of a government and/or public
14 institution shall refuse to disclose any record requested under this Act that
15 contains.

Third party
information.

16 (a) Trade secrets and commercial or financial information obtained from
17 a person or business where such trade secrets or information are proprietary,
18 privileged or confidential, or where disclosure of such trade secrets or
19 information may cause competitive harm. Nothing contained in this
20 subsection shall be construed to prevent a person or business from
21 consenting to disclosure.

22 (b) information the disclosure of which could reasonably be expected to
23 interfere with the contractual or other negotiations of a third party.

24 (c) proposal and bids for any contract, grants, or agreement, including
25 information which if it were disclosed would frustrate procurement or give
26 an advantage to any person.

27 (2) The head of a government and or public institution shall not, pursuant
28 to subsection (1), refuse to disclose a part of a record if that part contains the
29 result or product of environmental testing carried out by or on behalf of a
30 government and/or public institution.

1 (3) Where the head of a government and or public institution discloses a
2 record requested under this Act, or a part thereof, that contains the results of a
3 product or environmental testing, the head of the institution shall at the same time
4 as the record or part thereof is disclosed, provide a person who requested the record
5 with a written explanation of the methods used in conducting the test

6 (4) The head of a government and public institution shall disclose any record
7 requested under this Act, or any part thereof, that contains information described
8 in paragraph (1) (a) and (b) if that disclosure would be in the public interest as it
9 relates to public health, public safety or protection of the environment and, if the
10 public interest in disclosure clearly outweighs in importance any financial loss or
11 gain to, or prejudice to the competitive position of, or interference with contractual
12 or other negotiation of a third party.

Advice, etc.

13 **19.**-(1) The head of a government and or public institution may refuse to
14 disclose any record requested under this Act, that contains preliminary drafts,
15 notes, recommendations, memoranda and other records in which opinions are
16 expressed, or policies or actions are formulated, except that a specific record or
17 relevant portion thereof shall not be exempted when the record is publicly cited
18 and identified by the head of the government and/or public institution. The
19 exemption provided in this subsection extends to all those records of officers and
20 agencies of National or State Houses of Assemblies which pertain to the preparation
21 of legislative documents.

22 (2) Subsection (1) does not apply in respect of a record that contains-

23 (a) an account of, or a statement of reasons for a decision that is made in
24 the exercise of a discretionary power or an adjudicative function and which
25 affect the rights of a person; or

26 (b) a report prepared by consultant or an adviser who was not, at the time
27 the report was prepared, an officer or employee of a government and/or
28 public institution or a member of staff of a Minister of the Federal Government
29 or Commissioner of a State Government.

1	20. The head of a government and or public institution may refuse to	Legal Practitioner/
2	disclose any record requested under this Act that contains information that is	Client
3	subject to Legal Practitioner-Client privilege.	privilege
4	21. The head of a government and or public institution may refuse to	Course or
5	disclose any record requested under this Act which contains course materials	Research
6	or research materials prepared by faculty members.	Materials.
7	22. Notwithstanding any other provision of this Act, where a request is	Severability
8	made to a government and or public institution for access to a record that the	
9	head of the institution is authorized to refuse to disclose under this Act by	
10	reason of information or other material contained in the record, the head of the	
11	institution shall disclose any part of the record that does not contain, and can	
12	be severed from any part that contains any such information or material.	
13	23. Any person who has been refused access to a record requested under	Judicial
14	this Act, or a part thereof may apply to the Court for a review of the matter	review.
15	within thirty days after the head of the government and/or public institution	
16	refuses or is deemed to have refused the request, or within such further time as	
17	the Court may either before or after the expiration of those thirty days fix or	
18	allow.	
19	24. The head of a government and or public institution may refuse to	Refusal by
20	disclose any record requested under this Act that contains information	head of
21	pertaining to:	government
22	(a) test questions, scoring keys and other examination data used to	and or public
23	administer an academic examination or determine the qualifications of an	institution to
24	application for a license or employment.	disclose
25	(b) architects' and engineers' plans for buildings not constructed in	records.
26	whole or in part with public funds and for buildings constructed with	
27	public funds, to the extent that disclosure would compromise security,	
28	and	
29	(c) library circulation and other records identifying library users with	
30	specific materials.	

Hearing in a
summary
way.

1 **25.** An application made under section 23 shall be heard and determined
2 summarily.

Access to
Record by
Court.

3 **26.** Notwithstanding anything contained in any other Decree, Act or
4 enactment or any privilege under the law of evidence, the Court may, in the course
5 of any proceedings before the Court arising from an application under section 23
6 of this Act, examine any record to which this Act applies that is under the control
7 of government and/or public institution, and no such record may be withheld
8 from the court on any ground.

Court to take
precautions
against
disclosing
information.

9 **27.** In any proceedings before the Court arising from an application under
10 section 23, the Court shall take precaution, including when appropriate, receiving
11 representations *ex-parte* and conducting hearings in *camera* to avoid the
12 disclosure by the Court or any person of any information of other material on a
13 basis of which the head of a government and/or public institution will be authorized
14 to disclose a part of a record requested under this Act.

Burden of
Proof.

15 **28.** In any proceedings before the Court arising from an application under
16 section 23, the burden of establishing that the head of a government and or public
17 institution is authorized to refuse to disclose a record under this Act or a part
18 thereof shall be on the government and/or public institution concerned.

Order to
disclose
Records.

19 **29.** – (1) Where the head of a government and/or public institution refuses
20 to disclose a record requested under this Act, or a part thereof on the basis of a
21 provision of this Act, the Court shall order the head of the institution to disclose
22 the record or part thereof to the person who requested for access to the record-

23 (i) if the Court determines that the head of the institution is not authorized
24 to refuse to disclose the record or part thereof; or

25 (ii) where the head of the institution is so authorised, but the Court
26 nevertheless determines that the head of the institution did not have
27 reasonable grounds on which to refuse to disclose the record or part
28 thereof;

29 (iii) where the court makes a finding that the interest of the public in
30 having the record being made available is greater and more vital than the

1 interest being served if the application is refused, in whatever
2 circumstance.

3 (2) Any order the Court makes in pursuance of this section may be made
4 subject to such conditions as the Court deems appropriate.

5 **30.** This Act does not apply to-

Exempted
material.

6 (a) published material or material available for purchase by the public;

7 (b) library or museum material made or acquired and preserved solely for
8 public reference or exhibition purposes; or

9 (c) material placed in the National Library, the National Museum or the
10 non-public section of the National Archives of the Federal Republic of
11 Nigeria on behalf of any person or organization other than a government
12 and/or public institutions.

13 **31.**-(1) Notwithstanding anything contained in the Criminal code, penal

Protection
of public
officers
Cap. 77
LFN, 1990
Cap. 245
LFN, 1990
Cap. 335
LFN, 1990

14 Code, the Official Secrets Act, or any other enactment, no civil or criminal
15 proceedings shall lie against any government and or public institution, or against
16 any person acting on behalf of the government and or public institution, and no
17 proceedings shall lie against the Federal Government, State or Local Government
18 any institution thereof, for the disclosure in good faith of any record or any part
19 of a record pursuant to this Act, for any consequences that flow from that
20 disclosure, or for the failure to give any notice required under this Act, if care is
21 taken to give the required notice.

22 (2) Nothing contained in the Criminal Code or the Official Secrets Act shall
23 prejudicially affect any public officer who, without authorization discloses to
24 any person any public record and/or information which he reasonably believes
25 to show.

26 (a) a violations of any law, rule or regulation,

27 (b) mismanagement, a gross waste of funds, fraud, and abuse of
28 authority; or

29 (c) a substantial and specific danger to public health or safety
30 notwithstanding that such information was not disclosed pursuant to the
31 provision of this Act.

Document
Under security
Classification
Cap. 335,
LFN. 1990.

Submission
of reports.

1 (3) No civil or criminal proceedings shall lie against any person receiving the
2 information or further disclosing it.

3 **32.**-(1) the fact that any record in the custody of government and/or public
4 institution is kept by that institution under security classification or is a classified
5 document within the meaning of the Official Secrets Act does not preclude it from
6 being disclosed pursuant to a request for disclosure thereof under the provisions
7 of this Act, but in every case the head of the government and/or public institution
8 to which a request for such record is made shall decide whether such record is of
9 a type referred to in sections 14, 15, 16, 17, 18, 19, 20 or 21 of this Act.

10 (2) If the head of the government and or public institution to which the
11 request for a record mentioned in sub-section (1) is made, decides that such record
12 is not a type mentioned in the sections referred to in sub-section (1) hereof, access
13 to such record shall be given to the person requesting for such access.

14 (3) If the head of the government and or public institution to which the
15 request for a record mentioned in sub-section (1) is made decides that such record
16 is of a type mentioned in the sections referred to in sub-section (1) hereof, he shall
17 give notice to the person requesting for the record.

18 **33.**-(1) On or before February 1 of each year, each government or public
19 institution shall submit to the Attorney General of the Federal Republic of Nigeria
20 a report which shall cover the preceding fiscal year and which shall include-

21 (a) the number of determinations made by the Government or Public Institution
22 not to comply with requests for records made to such Government or Public
23 Institution under this Act and the reasons for each such determinations;

24 (b) the number of appeals made by persons under this Act, and the reason for
25 the action upon each appeal that results in a denial of information;

26 (c) a description of whether a court has upheld the decision of the Government
27 or Public Institution to withhold information under such circumstances and a
28 concise description of the scope of any information withheld;

29 (d) the number of requests for records pending before the Government or
30 Public Institution as of October 31 of the preceding year and the median number

1 of days that such request had been pending before the Government or
2 Public Institution as of that date;

3 (e) the number of requests for records received by the Government or
4 Public Institution and the number of requests which the Government or
5 Public Institution processes;

6 (f) the median number of days taken by the Government or Public Institution
7 to process different types of requests;

8 (g) the total amount of fees collected by the Government or Public
9 Institution to process such requests; and

10 (h) the number of full-time staff of the Government or Public Institution
11 devoted to processing requests for records, and or the total amount expended
12 by the Government or Public Institution for processing such requests.

13 (2) Each government or public institution shall make such report available
14 to the public including by computer telecommunications, or if computer
15 telecommunications means have not been established by the Government or
16 Public Institution, by other electronic means.

17 (3) The Attorney-General shall make each report, which has been submitted
18 to him, available at a single electronic access point.

19 (4) He shall notify the Chairman and ranking minority member of the
20 Committee on Government Reform Oversight of the House of Representatives
21 and the Chairman and ranking minority member of the Committees on
22 Government Affairs and the Judiciary of the Senate, not later than April 1 of the
23 year in which each such report is issued, that such reports are available by
24 electronic means.

25 (5) The Attorney-General shall develop reporting and performance
26 guidelines in connection with reports required by this section and may establish
27 additional requirements for such reports as the Attorney-General determines
28 may be useful.

29 (6) The Attorney-General shall submit an annual report on or before April
30 1 of each calendar year which shall include for the prior calendar year a listing
31 of the number of cases arising under this Act, the exemption involved in each

1 case, the disposition of such case, and the cost, fees, and penalties assessed.

2 (7) Such report shall also include a description of the efforts taken by the
3 Ministry of Justice to encourage all government or public institutions to comply
4 with this Act.

5 (8) For purposes of this section, the term –

6 (a) “government” includes any executive department, military department,
7 government corporation, government controlled corporation, or other establishment
8 in the executive branch of the government (including the Executive Office of the
9 President), or any other independent regulatory government or public
10 institution; and

11 (b) “record” means any term used in this Act in reference to information
12 which includes any information that would be government or public institution
13 record subject to the requirements of this Act when maintained by government or
14 public institutions in any format, including an electronic format.

Complementary
Procedures.

15 **34.** – (1) This Act is intended to complement and not replace existing

16 procedures for access to public records and information and is not intended to
17 limit in any way access to those types of official information that have, hitherto,
18 been normally available to the general public.

19 (2) Where the question whether any public record and/or information is to be
20 made available, where that question arises under this Act, the question shall be
21 determined in accordance with the provisions stated herein, unless otherwise
22 exempted by this Act.

EXPLANATORY MEMORANDUM

This Bill seeks to provide a right of access to public information or records kept by government, public institution and/or private bodies carrying out public functions for citizens and non-citizens of the country.

2. This will increase the availability of public records and information to citizens of the country in order to participate more effectively in the making and administration of laws and policies and to promote accountability of public officers.

3. The Bill also seeks to provide the disclosure of public records or information by public officers without authorisation thereof provided it is for public interest and such officers are protected from adverse consequences flowing from such disclosure.