

Freedom of Information Bill

Frequently Asked Questions

“Subject to the provisions of this Act but notwithstanding anything contained in any other Act, Law or Regulation, every citizen of the Federal Republic of Nigeria, has a legally enforceable right to, and shall, on application be given access to any record under the control of a government or public institution.”

- Section 2(1) of the Freedom of Information Bill



1. *What is the Freedom of Information Bill about?*

The Freedom of Information Bill (FOI Bill) is a proposed Law that seeks to give every Nigerian citizen a legally enforceable right of access to records, documents and information held by the Government or government institutions and agencies as well as private bodies performing public functions, subject to certain exemptions.

2. *What new rights will the Bill give me as a Nigerian?*

It will give every Nigerian the right to apply for information and records held by Government or government institutions and agencies. The right of citizens to apply for and have access to such records and information is new in Nigeria. Before now, some existing Laws and Regulations make it an offence for civil servants and public officers to give information to members of the public without specific authorization by senior government officers. The provisions of the FOI Bill will override such Laws and Regulations and promote openness in Government.

3. *Do I have to give reasons why I want information?*

Section 2(2) of the Bill specifically provides that an applicant does not need to demonstrate any specific interest in the information he or she is applying for, which means that he or she does not need to explain why the information is being requested.

4. *How do I make the request for information?*

An applicant is expected under Section 4 of the Bill to apply for access to a record or document in writing and to provide sufficient detail in the application to enable a staff of the institution, with a reasonable effort, to identify the record.

5. *Can I make an oral or informal request for information?*

No. The FOI Bill requires that an applicant should make his or her request in writing to the appropriate authority. A formal application helps to document your request and makes it easier to track the level of compliance with the provisions of the Bill, when it becomes Law.

6. *How do I know if the information I require exists and who has custody of it?*

Section 3 of the FOI Bill compels every government institution, department or agency, through its head, to publish in the Federal Gazette a description of its responsibilities, the records under its control, administrative manuals, etc. This is intended to give members of the public information about the records and information available in these institutions so that they know where to apply for the records or documents they are interested in.

7. *From which government institution or private body can I apply for information?*

Nigerian citizens can apply for records and information from any government ministry, department, agency parastatals, etc., at any tier of government, whether Federal, State, or Local Government. The proposed Law also covers all three branches of government, namely: the Executive, the Legislature and the Judiciary. Applications for records or information can also be made to private bodies or companies that are performing public functions.

8. *What sort of information can I apply for?*

A Nigerian citizen can apply for any record or information in the custody of any government institution, department or agency, as well as private bodies or companies performing public functions, subject to those categories of records and documents that are exempted from general public access. These are clearly stated in the proposed Law.

9. *Can I be denied access to any record or information?*

It is expected that applicants should not be denied access to any record or information which does not fall under one of the categories of exempted materials.

10. *When I apply, how do I know if I will be given access or if access is denied?*

Section 5 of the FOI Bill requires the head of the government institution to which an application is made to, within 14 working days of the application, give the applicant a written notice informing him or her whether or not access to the record or part of it will be given and to give the applicant access to the information or record.

Where access will not be given, the Bill also requires the head of the institution, within 14 working days, to give notice to the applicant stating the specific provisions of the Bill on which the refusal is based and informing the applicant that he or she has a right to challenge the refusal in Court.

11. *If I am denied access to information, how can I seek redress? What can I do if I am not satisfied with the way that a public authority responds to my request?*

Section 22 of the FOI Bill gives an applicant the right to apply to a court for judicial review where he or she is denied access. The applicant is expected to, within 30 days after he or she has been informed that access will not be given or when access is deemed to have been refused, apply to court for a review of the decision refusing him or her access or the failure of the institution or agency to grant him or her access. The court may, where necessary, extend this time limit. An application to the court shall be heard and decided summarily so as prevent delays.

12. *How can a court determine if the record or document that I have been denied access to is genuinely exempted under the Law?*

The FOI Bill gives the court the power to examine any record under the control of Government or a public institution and stipulates that no such record may be withheld from the court on any ground. However, the court is required to take precautions to avoid the disclosure of such record or information before it decides whether access should be granted.

13. *What happens if the information I want is not held by the institution or agency to which I make the application?*

The Bill provides that where a government or public institution receives an application for access to a record which it considers that another government or public institution has a greater interest, the head of the institution to which the application is made may within three days but not later than seven days, transfer the application, and if necessary, the record to the other government or public institution. The head of the institution transferring the application is also required to give written notice of the transfer to the applicant and notice should contain a statement informing the applicant that the decision to transfer the application can be reviewed by a Court.

14. *Will I have to pay for information if I am granted access?*

Yes, but the fees are limited to reasonable standard charges for search, duplication and transcription. But where the information is required in the public interest or is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily for commercial purposes, the information shall be given without any charge or at a charge below the established fees.

15. *Can I choose the format I want information or record to be provided me? In what form can I access the records or information that I want?*

An applicant can access the records and information in one or more of several ways, provided that the form in which he or she wants the information would not interfere unreasonably with the operations of the institution or if it would not be detrimental to the preservation of that record; and if it will not infringe on the copyright of the owners or the record or document, where this is not the Government. Records and information can be accessed by an applicant through physical inspection or duplication, and in the case of records from which sound or visual images can be produced, arrangement to hear or view them. Records may also be transcribed in cases where they are codified.

16. *How long will I have to wait to receive the information I applied for?*

Under Section 5 of the FOI Bill, you should know within 14 working days after submitting your application and paying the applicable fees whether or not access will be granted. If you are granted access, you should also have the record or information within that same period.

17. *Can I apply for personal information held by the government?*

Personal information are exempted from the general right of access. These include: files and personal information about clients, patients, residents, students, or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from federal agencies, government or public institutions; files about employees, appointees or elected officials of any government or public institution or applicants for such positions; and files about any applicant licensee by any government or public institution cooperating with or engaged in professional or occupational registration, licensing or discipline.

Personal information can only be disclosed where the individual whom the information is about agrees to its disclosure, where the information is already publicly available, or where the disclosure of the information is of public interest and the public interest in having access to it clearly outweighs the protection of the privacy of the individual whom the information is about.

18. *What types of records and information are exempted from disclosure under the Bill?*

There are certain categories of information that are exempted from the general right of access. They are listed in Sections 13 to 20 and include:

- a. Information that may be injurious to the defence of Nigeria
- b. Information that may be injurious to the conduct of international affairs
- c. Information which may interfere with law enforcement investigations or be injurious to the security of penal institutions
- d. Information that contains trade secrets or may be injurious to the economic or financial interests of Nigeria
- e. Personal information
- f. Information that contains trade secrets or commercial or financial information obtained from a person or business, the disclosure of which may cause competitive harm to that third party
- g. Information that is subject to solicitor/client privilege
- h. Records containing information on course or research materials prepared by faculty members

19. What happens if the information I need has been altered or deleted from the records?

Section 10 of the FOI Bill makes it a criminal offence for any officer or the head of any government or public institution to try to willfully destroy or doctor or in any way alter any records kept in his or her custody before they are released to any person, entity or community applying for it. The Law prescribes a penalty of a maximum of three years imprisonment on conviction for this offence.

20. If I have a disability can I get a record in a special format, like braille?

The FOI Bill provides that record and information should be given to the applicant in the format that he or she wants it, either in audio, visual, or transcribed formats. You can therefore get the record in a special format if it would not interfere unreasonably with the operations of the institution or is not detrimental to the preservation of the record.

21. What are the offences and penalties under the FOI Bill?

The only offence under the FOI Bill is for anyone having custody of a record or information to attempt to willfully destroy, doctor or alter it. The Bill makes such a criminal offence which is punishable on conviction with a maximum of three years imprisonment.

22. Where a provision of the FOI Bill is in conflict with that of the Official Secrets Act which takes precedence?

Where there is a conflict between the proposed Freedom of Information Act with any other Law, including the Official Secrets Act, the Freedom of Information Act will take precedence. This is clear from Section 2(1) of the FOI Bill, which provides that: "Subject to the provisions of this Act but notwithstanding anything contained in any other Act, Law or Regulation, every citizen of the Federal Republic of Nigeria, has a legally enforceable right to, and shall, on application be given access to any record under the control of a government or public institution."

23. Public servants are required to subscribe to oaths of secrecy when employed. In addition, the Official Secrets Act makes it an offence to disclose information without authorisation. Will civil servants not be committing an offence by disclosing information?

No. Sections 29 and 30 of the FOI Bill have taken care of that problem. They override other statutes that promote secrecy. The provisions of Sections 29 and 30 protect civil servants from civil or criminal prosecution if they disclose information without official authorization.

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