



**ANNUAL REPORT ON IMPLEMENTATION OF THE FREEDOM  
OF INFORMATION ACT 2011 (FOIA) PREPARED BY  
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**VOLUME 1: NARRATIVE REPORT  
MEASURES TAKEN AND CHALLENGES ENCOUNTERED IN  
IMPLEMENTATION OF THE FOIA**

**30<sup>TH</sup> MARCH 2012**

## **1.0 General Introduction**

1.1 The Freedom of Information Act, 2011 (the FOIA 2011) came into operation on 28<sup>th</sup> May 2011. Under Section 1 of the Act, all government or public institutions are required, subject to certain exceptions, to disclose information pursuant to a request by any person. In addition, public institutions are required to put in place adequate machinery for record keeping and publish information about itself as specified under section 2 of the Act.

1.2 The Attorney General of the Federation (HAGF) enjoins all public institutions to understand the implementation of the FOIA in the context of open government, which itself, is critical to ensuring transparency and accountability for decisions made by the government.

## **2.0 Reporting Obligations under the Act.**

2.1 Section 29 (6) of the FOIA entrusts the HAGF with the responsibility of ensuring compliance by all public institutions. It requires Public institutions to submit to the HAGF, annual reports of dispositions made by them under the Act in the preceding year. The

HAGF is in turn required to submit an annual report to the National Assembly not later than April 1. In accordance with subsection (8) of section 29, such report shall also include detailed description of the efforts made by the Ministry of Justice to encourage all public institutions to comply with this Act.

2.2 It has been observed that less than 5% of the 500 or more public institutions in Nigeria complied with the reporting requirements under section 29 of the FOIA for 2011. This can however be explained as a consequence of the fact that the Act itself was enacted in 2011 and there was need to make institutional arrangements for its implementation.

### **3.0 Compliance Measures by the HAGF**

3.1 The Office of the HAGF has in addition to consultations and advisory opinions taken the following initiatives to encourage compliance by public institutions:

- (a) Organization of a sensitisation workshop on the FOIA 2011 for legal advisers of MDAs and law officers of the FMOJ on the 20<sup>th</sup> of October 2011;

- (b) Issued an Advisory Memorandum HAGF/MDAS/FOIA/2012/I on 28<sup>th</sup> January to all public Institutions which was published in National Newspapers and widely circulated. (copy of Memorandum is herewith attached as Appendix A);
- (c) Issued a Circular signed by Solicitor General of the Federation and Permanent Secretary, Federal Ministry of Justice on 6<sup>th</sup> March 2012, reminding Ministries Departments and Agencies (MDAs) of their obligations under section 29 of the FOIA 2011;
- (d) Issued Guidelines On the Implementation of the FOIA 2011 on 15<sup>th</sup> March 2012 (copy attached herewith as Appendix B)

#### **4.0 Supportive Measures by the HAGF**

4.1 Improving FOIA performance requires the active participation of all MDGs. Each agency is required to designate a senior official who has direct responsibility for ensuring that the MDAs efficiently and appropriately comply with the FOIA. The designated official is expected to recommend adjustments to agency practices, personnel, and funding as may be necessary.

4.2 The Federal Ministry of Justice (FMOJ) has established an FOIA Unit in the office of the Attorney General of the Federation and has encouraged all public institutions to establish such units.

4.3. In the coming year, the Ministry will pursue enhanced training and capacity building measures for legal advisers and FOIA officers of Public institutions on the guidelines and other implementation measures.

## **5.0 Implementation Challenges**

5.1. Inadequate resources constitute a major challenge to the implementation under the Act. The Federal Ministry of Justice requires additional resources to put in place the requisite institutional mechanism for effective monitoring and collation of reports.

5.2 It should also be noted that in an advanced jurisdiction like the United Kingdom, the FOIA did not come into force immediately it was enacted, but was put in abeyance for some years while the government developed structures and institutional capacity for the effective implementation of the Act.

5.3. It must also be emphasized that although the Act mandates the HAGF to ensure compliance with its provisions, the enforcement

powers of the HAGF are, at best, weak and ambiguous. For example, there is no general provision to make regulations that are backed up with sanctions for the enforcement of the Act. This means in effect that the Guidelines issued by the Office of the Attorney General of the Federation are mainly advisory.

5.4 The prerogative to compel compliance with a request or sanction under the Act rests solely with the courts. When compared with other jurisdictions, the absence of an administrative machinery to resolve complaints is a significant weakness in the FOI legislation. Whereas, under the Nigerian Act complaints arising from a refusal of a request lies to the courts, the UK legislation provides for the exhaustion of administrative channels (i.e. information Commissioner/ Information Tribunal) before complainants can go to the court. There is therefore in Nigeria a risk of overwhelming the courts with a deluge of cases arising from FOIA complaints.

## **6.0 Conclusion**

6.1 The Office of the HAGF wishes to assure the National Assembly and indeed all Nigerians that notwithstanding the challenges enumerated above, concerted efforts are being made to ensure

that public institutions comply with the letters and spirit of the FOIA 2011. The attention of the National Assembly is however drawn to these implementation challenges with a view to engendering necessary review or amendments as may be appropriate to ensure efficient and effective implementation of the Act.

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30<sup>th</sup> March 2012