

**FEDERAL MINISTRY OF JUSTICE AND UNITED  
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CONSULTATIVE FORUM**

**ON THE REVISED GUIDELINES ON  
IMPLEMENTATION OF THE FREEDOM OF  
INFORMATION ACT 2011**

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**SOME OF THE CHALLENGES IN IMPLEMENTING THE  
CURRENT GUIDELINES ON FREEDOM OF  
INFORMATION ACT, 2011**

By

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# **SOME OF THE CHALLENGES IN IMPLEMENTING THE CURRENT GUIDELINES ON FREEDOM OF INFORMATION ACT, 2011 (FOIA)**

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## **1. Introduction**

It is important to start this discussion on a note of appreciation to the Honourable Attorney General of the Federation and Minister of Justice for the steps taken so far in developing the operational Guidelines and reporting Template to internalize the knowledge and implementation of the Freedom of Information Act, 2011 in the Ministries, Departments and Agencies (MDAS) of government.

It is a notorious fact that, the Act <sup>1</sup> was signed into law on 28th May, 2011; and within nine months of the enactment, Hon. Attorney –General of the Federation (HAGF) had developed the Guidelines, Reporting Template and circulated same amongst the MDAs. The Service is grateful to the Honourable Minister of Justice’s working team that made the achievements possible.

Despite these giant efforts of the Ministry of Justice, and the on – going decision to review the Guidelines for better application, the realities on the ground in most MDAs have shown that, Public officers are having some challenges in the effective implementation of the present Guidelines.

In view of the fact that, the duties under the Act are not optional but mandatory, it becomes incumbent to highlight some of the challenges for the attention of the authorities and experts for consideration and necessary actions in the review.

The challenges of public officers in the implementation of the Guidelines are numerous but the few mentioned in this paper are to agitate the minds

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<sup>1</sup> Freedom of Information Act, 2011

of our experts for fruitful discussions on the realistic approaches to the solutions.

## **2. SOME OF THE CHALLENGES IN THE IMPLEMENTATION OF THE GUIDELINES.**

- a. **Officers' lack of knowledge of the existence of the Guidelines:** one of the challenges in some MDA in the implementation of the Guidelines is the sad reality that many officers are not even aware that the operational Guidelines existed. Despite the fact that HAGF developed these Guidelines and circulated them to the MDAs in early 2012, most of the Public Institutions are yet to make copies of these Guidelines available to each of their officers. The knowledge of the existence of the Guidelines in such MDAs is therefore limited to those that received the circulated copies. Even among the Institutions that were in receipt of the Guidelines, there were perceptions that, the document was one of those Service- wide Circulars meant for keep in the files or for custody in the keep – in-view (K.I.V) files. This is a sad reality that needs urgent attention. Happily, the Inter-Ministerial Committee on FOIA in the Office of the Head of the Civil Service of the Federation (OHCSF) has started addressing this challenge by ensuring copies of the present Guidelines are made available in most of the fora on FOIA it organizes. However, it is important to point out for the record that, the situation was one of the challenges to the implementation of the present Guidelines.
- b. **Aparty to the diligence study of the Guidelines by those that have copies:** A cursory survey in some MDAs showed that, many officers have gotten copies of the present Guidelines but most of them have not read it; neither do they have any immediate plan to do so. In such scenario, the implementation by such officers in the discharge of their duties suffers serious setback and this ineluctably affects both the quality and correctness of the mandatory report being expected by HAGF from the MDA concerned.
- c. **Casual contact with the Guidelines without evidence of appreciable curiosity to eternalize the content:** Many public officers have casual contact with the Guidelines and those that tried to peruse the

document; either read it half way or perused the document without the requisite seriousness to internalize the content. A large number of public officers are in this category; and it is a sad development that challenges the actualization of the objectives of the Guidelines among officers.

- d. **Managerial indifference of some Accounting Officers to their duties to the Guidelines as required by the Act:** What the Guidelines seeks to achieve is to help Accounting officers to effectively perform their duties or discharge the obligations of their respective Institutions as required by the Act. It is however a common knowledge beyond argument that, the extent of achievements of the mandates of any public institution is dependent on the vision, drive and dynamism of the Chief Executive Officer or the Accounting Officer as they are interchangeably called. Consequently, where the Accounting Officers become indifferent to their duties under the Act, as seen in some Institutions, the officers under them cannot justifiably be expected to do better. A careful perusal of the content of the Act, will show institutional responsibilities of MDAs which the operational Guidelines developed by HAGF' able team seeks to help the Accounting Officers who are the Chief drivers of government's Reform Agenda. However, the realities on the field have shown that, most CEOs/ Accounting Officers of MDAs are either oblivion of the duties expected of their institutions or they are just been indifferent to the matter; and this stance controls the attitudes of their staff to the implementation of Guidelines.
- e. **Lack of institutional structures for consistence and continuous report-collation- process in the implementation of Guidelines."** The Act is explicit that,<sup>2</sup> ***"Notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request 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."*** The actualization of this right

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<sup>2</sup> Section 1(1) of Freedom of Information Act, 2011

established by the Act is a continuous affair in the day to day discharge of duties of the MDAs in their interactions with the citizens. Unfortunately, most MDAs have no institutional nexus between their various Departments and the In-House Committee(s) or Desk officer(s) on FOIA for the required documentation of the access to information in their Departments. Alas, most of the In-House committees or the Desk officers only start looking for what should be contained in their Report to HAGF few days to when they wanted to submit same to the Ministry of Justice. This is evidently at variance with the expected approach to the implementation of the Guidelines and is a big challenge to the effective realization of the reporting system required by the Act. The fact is that, the collation of information for the purposes of the statutory annual Report to HAGF is expected to be a consistent and continuous circle within each Public Institution to make the right information and the circumstances surrounding the treatment of each request for information readily available to the In- House Committees or Desk Officers for inclusion to HAGF as at when due. However, these institutional structures between the various Departments of most public Institutions and their respective Desk Officers are still lacking in most MDAs; and it is a disturbing challenge to the implementation of the present Guidelines.

- f. **Insufficient or lack of training for In-House Committee Members & Desk officers on the implementation of the Guidelines.** In order to make the required progress in the implementation of the Guidelines, we must accept the fact that, the training of officers for the efficient application of the document for the attainment of the objectives of the Act is now a statutory duty of every government and public institution and is no longer an administrative discretion. Thus, it is enshrined in the Act <sup>3</sup>that, “ ***every government or public institution must ensure the provision of appropriate training for its officials on the public’s right to access to information or records held by government or public***

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<sup>3</sup> Section 13 of the FOIA, 2011

***institutions, as provided for in this Act and for the effective implementation of this Act.***” Despite the prompt development of the operational Guidelines and Reporting Template by the Federal Ministry of Justice for the public institutions, most MDAs have not exposed their schedule officers to any form of training on the proper handling of these operational documents in their respective institutions.

One of the reasons for this challenge is the absence of financial provisions in the budgets of most MDAs for the purpose. It may interest our experts to note that, even though the Act became operational before the call - circular for the preparation of 2012 budget was issued, most public institutions made no provisions in their 2012 budgets for the discharge of this specific statutory training of their officers. A cursory Inquiry will show that, few MDAs reflected training under FOIA in their 2013 budgets. It is important to note that, while the conventional trainings in most Public Institutions are matters usually treated within the administrative discretions of the Accounting Officers and failure to carry out any training within a fiscal year despite some budgetary provisions made for same, has not been publicly sanctioned, the training for the effective implementation of the FOIA, 2011 is a statutory responsibility, and Accounting Officers may not be able to effectively perform their duties as required by the Guidelines if the training component is neglected. This is an issue that HAGF charged with onerous duties under the Act needs to address through the appropriate fora, as it adversely affects officers’ understanding and implementation of the Guidelines.

- g. Ignorance of individual responsibilities and institutional duties under the Act:** Other challenge to the effective implementation of the Guidelines includes the ignorance of the existence of individual and institutional duties under the Act. The Act provides that,<sup>4</sup> ***“where the government or public institution refuses to give access to a record or information applied for under this Act, or a part thereof, the institution***

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<sup>4</sup> Section 7 (1)(2) & (5) of the Act.

***shall state in the Notice given to the applicant the grounds 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 reviewed by a court. A notification of denial of any application for information or records shall state the names, designation and signature of each person responsible for the denial of such application. Where a case of wrongful denial of access is established, the defaulting officer or institution commits an offence and is liable on conviction to a fine of N500, 000.00***". From the foregoing, there are statutory individual officer's duties and institutional responsibilities which ought to alert officers to their obligations under the Act. However, ignorance of these responsibilities has affected the officers' attitudes toward the use of the operational Guidelines with the resultant negative effects on the annual reports forwarded to HAGF in the reporting season.

- h. **Lack of administrative sanctions for failure of duties under the Act:** As earlier mentioned, the operational Guidelines were meant to assist officers and public institutions to discharge their duties efficiently as required by the Act, without fail. Unfortunately, many officers and institutions have not performed up to expectations in this regard; thereby making the duties of the Federal Ministry of Justice under the Act and indeed the responsibilities of HAGF to the public and the National Assembly onerous and hazardous. This ought not to be and the trend should not be allowed to continue. Unfortunately, the section<sup>5</sup> of the Act that ordered the submission of Report to HAGF has no corresponding provisions for sanctions against Institutions/officers for failure or negligence. The only provision for sanctions in the Act<sup>6</sup> states, ***"Where a case of wrongful denial of access is established, the defaulting officer or institution commits an offence and is liable on conviction to a fine of N500, 000.00"***. This penalty provisions is not very helpful to the case of institutional failure to the duties under section 29 of the Act, neither does it help the HAGF to penalized defaulting officers

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<sup>5</sup> Section 29 of the Act

<sup>6</sup> Section 7 (5) of the Act

for negligence of duty. These are due to the fact that, the failure of officers to either submit report promptly or correctly may not be treated as wrongful denial of access to information. Secondly HAGF being a major stakeholder in the Executive arm of Government do not readily take another Institution of the Executive to court for conviction and payment of penalties for failure to submit report to his office; yet these reports are necessary for the Ministry of Justice to perform its duties to the public and the National Assembly<sup>7</sup>. This is a major challenge to the effective implementation of the Guidelines and needs the attention of the experts as HAGF's Office considers the review of the Guidelines.

- i. Absence of provisions in the present Guidelines for electronic application of the Act:** The Act recognizes both print and electronic information at the offices of public Institutions for access by interested persons. Thus, section 2 (4) of the Act provides, “ ***a public institution shall ensure that information referred to in this section is widely disseminated and made readily available to members of the public through various means, including print, electronic and online sources, and at the offices of such public institutions.***” Since the Act has made it incumbent on the MDAs to provide the requested information electronically and by other online sources, there is the need for the Review Committee in the Office of the Attorney General of the Federation to consider the inclusion in the expected Guidelines, implementable provisions on how this aspect of the Act can be operated by public officers; particularly, the issue of electronic submission of applications vis-à-vis the implications of that approach to information management in public institutions. It appears the present Guidelines is silent on this aspect of the Act and the situation is a challenge to the officers who are expected to be guided by the contents of the Guidelines in the discharge of the duties of their respective institutions.

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<sup>7</sup> Section 29 (3) & (4) of the Act



### **3. SOME SUGGESTED REMEDIES TO SOME OF THE CHALLENGES:**

The following remedies are suggested for consideration as solution to some of the highlighted challenges:

- (i) Constant interface between HAGF's officials managing the Guidelines and the Desk officers/ In-House Committees of the MDAs on the proper implementation of the Guidelines by public officers: There is need for periodic but constant interactions between the office of HAGF and Desk officers in the MDAs on the best way to implement the Guidelines. Such interactions when regulated to attain the functional balance between the frequency of the meetings and content of the interactions will go a long way to achieve the objectives of the Guidelines amongst officers.
- (ii) Periodic interaction between HAGF (in person) and the Chief Executive Officers/Accounting Officers of MDAs for top management decisions and policy directives on what HAGF expects of these top managers will greatly enhance the attitudes of officers toward the Guidelines and gives the document its pride of place in the public institutions.
- (iii) As part of the supervisory duties of the Federal Ministry of Justice as enshrined in section 29 (8) of the Act, HAGF may consider demanding for empirical evidence of officers trained by the MDAs as required by the Act. This will make it incumbent on the Public institutions to expose their Desk officers and In-house committees members on FO1A to appropriate training as at when due.
- (iv) Viewed from another perspective, statutory duties ought to have a budget line for its implementation. Most Chief Executives of public institutions and their budget officers do not create budget heads in their institutions for the implementation of the Guidelines to achieve the objectives of the Act. This is an issue that should be taking up with the Budget Office of the Federation by the appropriate authorities.
- (v) The Act charged the Federal Ministry of Justice and the Honourable Attorney General of the Federation (HAGF) with

several responsibilities<sup>8</sup> that, ***“the Attorney-General 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. The Attorney General shall notify the Chairman and ranking Minority member of the Committee on Government Reform Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Government Affairs and the Judiciary of the Senate , not later than April of the year in which each such report is issued, of the existence of such report and make it available to them in hard copies as well as by electronic means. The Attorney General shall develop reporting and performance guidelines in connection with reports required by this section and may establish additional requirements for such reports as the Attorney-General determines may be useful. The Attorney General shall in his oversight responsibility under this Act ensure that all institutions to which this Act applies comply with the provisions of the Act. The Attorney General shall submit to the National Assembly an annual report on or before April 1 of each calendar year which shall include for the prior 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. Such report shall also include detailed description of the efforts taken by the Ministry of Justice to encourage all government or public institutions to comply with this Act”*** -In view of these numerous responsibilities and supervisory roles, there is need to consider a separate and dedicated budget line centrally domiciled in the Ministry of Justice for the effective discharge of these statutory duties if the intentions of the Guidelines should be achieved in the polity. Novel responsibilities

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<sup>8</sup> Section 29 (3)(4)(5)(6)(7) & (8) of the Act.

require novel solutions just as activities naturally consume resources.

- (vi) Alternatively, HAGF may consider to take some of the appropriate administrative steps to liaise with the relevant authorities to centralize in the Ministry of Justice the training of members of the In-House committees in MDAs and their focal Desk officers at the expense of the respective MDAs in view of the clear provisions of the Act on the duties of the MDAs and the supervisory roles of the Federal Ministry of Justice<sup>9</sup>.

#### **4. CONCLUSION:**

In conclusion, may I re-emphasize as pointed out at the beginning of this session that the challenges highlighted in this paper are just to agitate the minds of the experts working on the reviewed Guidelines for fruitful discussion on the subject, just as the suggested solutions are not exhaustive on the way forward. Suffice it to say that, the challenges in the implementation of the present Guidelines are real. Allowing some of these challenges to continue is not an acceptable excuse for any failure of obligations under the Act. The duties the FOIA requires of each stakeholder are mandatory and not discretionary. Efforts being made by the Ministry of Justice to find solutions to the challenges through the instrumentality of reviewed Guidelines are welcome development that should be supported and encouraged all.

**Thanks for listening.**

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<sup>9</sup> See sections 13 and 29 (8) of the Act.