



KEYNOTE ADDRESS

BY

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**At A National Summit On The Freedom Of Information Act Organised
By Media Rights Agenda In Partnership With The United States
Agency For International Aid (USAID)**

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Courtesies

I am grateful to the organizers of this National Summit on the Freedom of Information Act 2011 for the opportunity to give this keynote address.

2. The Freedom of Information Act (FOIA) came into operation on 1st June 2011. His Excellency President Goodluck Jonathan, GCFR instructed at the signing of the Act that "*The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails.*" Indeed, whenever a Public Institution determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure. Public Institutions should always be mindful that the Act requires them to take reasonable steps to segregate and release non-exempt information.

3. Under 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 must put in place adequate machinery for record keeping and publish information about itself. The right of access to information derives from the guarantees of freedom of expression found in Article 19 of the Universal Declaration on Human Rights 1948, and in the case of Nigeria is to be found in Section 39 of the Constitution of the Federal Republic of Nigeria, 1999. Section 1 of the Act

guarantees a right of access to information whether written or not which is in the custody of a public agency or official.

4. Permit me to say a few words on the relationship between the Official Secrets Act, Cap O3 LFN 2004 (OSA) and the FOIA. Both legislation have different objectives. The former is concerned with among other things securing public safety by restricting the disclosure of classified or security related information while the latter seeks to make public records and information more freely available, in a manner consistent with the public interest and the protection of personal privacy.

5. The Freedom of Information Act did not repeal the Official Secrets Act. A substantial part of the Official Secrets Act is still very much in operation. However any inconsistency between the FOIA and the Official Secrets Act should ordinarily be resolved in favour of the Freedom of Information Act in accordance with the well known cannon of statutory interpretation that a latter statute prevails where there is inconsistency between two statutes. This is put beyond controversy by virtue of sections 1, 27 and 28 of the Freedom of Information Act.

6. By virtue of section 9 of the Official Secrets Act a "classified matter" means any information or thing which, under any system of security classification from time to time in use by or by any branch of

the government, is not to be disclosed to the public and of which the disclosure to the public would be prejudicial to the security of Nigeria. What section 27 has done is in fact to re-define “classified matter for the purpose of disclosure of information in terms of the exemptions referred to under the Freedom of Information Act. It becomes incumbent on the public service in the light of these provisions to embark on a re-classification of records so as to reduce conflict with the Freedom of Information Act.

7. It is worth recalling that the implementation of the Freedom of Information Act is one of the cardinal strategies of my office that are being pursued under the aegis of the Panel on the Implementation of Justice Reforms (PIJR) chaired by Justice Ishaq Bello. The sixth platform of my reform plan outlines as priorities the development of FOIA guidance manuals for all government agencies training programs for all the government agencies and the facilitation of desk officers for the management of FOI information and privacy issues

8. Section 29 (6) of the Freedom of Information Act entrusts the Office of the Attorney General of the Federation with the responsibility of ensuring compliance by MDAs. It in particular requires Public institutions to submit to the Attorney General, annual reports of dispositions made by them under Act in the preceding year.

9. My office has through several initiatives encouraged compliance by public institutions. Towards this end the HAGF organized on the 20th of October last year a sensitization workshop of the Freedom of Information Act for legal advisers of MDAs and law officers of the Federal Ministry of Justice.

10. Furthermore in a recent advisory memorandum, I advised that the effective implementation of the Act's reporting regime requires each public institution to take active steps to re-organise its information and records dissemination process for purposes of compliance with the Act. There is also need for public institutions to use modern technology to inform citizens of what is known and done by government. Accordingly, agencies should readily and systematically post information online in advance of any public request. Providing more information online reduces the need for individualized requests and may help reduce existing backlogs.

11. Public institutions are required to answer requests for information promptly. They are also to practise good records management to ensure information is identified and retrieved. The kinds of record covered by the Act are all recorded information held by, or on behalf of a public institution. The legislation applies regardless of the age, format, origin or classification of information. However, certain records are exempt. An application under the Act

would generally be in writing. However, illiterate or disabled applicants can still apply for information under the Act by making an oral application for information to any public institution.

12. The Guidelines on the implementation of the Freedom of Information Act which was recently issued by my office will no doubt go a long way in facilitating clearer implementation of the Freedom of Information Act 2011 as well as aiding understanding and application of the Freedom of Information Act by stakeholders. It is important in this regard to note that the disclosure obligation under the Act is not absolute. The Act provides exemptions to protect, for example, national security, personal privacy, privileged records, and law enforcement interests.

13. In all cases of qualified exemptions the public institution shall disclose the information requested for if (i) disclosure would be in the public interest and (ii) if the public interest in the disclosure clearly outweighs the injury to any of the interests outlined in sections 11 – 19 of the Act. Where the public institution determines that disclosure will not be in the public interest or that the public interest in favour of disclosure does not sufficiently out-weigh the public interest to safeguard the interests outlined in any particular case covered by the above provisions, it may either refuse the request or consider whether there is some non-exempted part of the information

covered by the request which can be severed from the exempted part.

14. The decision of the public institution is not final as section 20 provides that an applicant may apply to court for judicial review of the decision within 30 days. The onus of proving that information falls within any particular exemption rests on the public institution.

15. It is important in our respectful view for information or disclosure officers to demonstrate that they have considered and carefully weighed these interests before coming to a decision. In this regard it is desirable that every decision should show that all material circumstances have been considered; the specific public interest against disclosure; and the specific public interest in favour of disclosure.

16. There are no doubt significant challenges that confront the seamless implementation of the Freedom of Information Act. One instance relates to the transition required on the part of public officers to shift from a culture of secrecy to one of transparency. It is gratifying to note that the Office of the Head of Service of the Federation has made training in the implementation of the Freedom of Information Act regime a priority for the Federal Civil Service.

17. I should also add that currently the institutional framework for implementation of the Freedom of Information Act is skeletal. This is not only a question of its novelty but also on account of its express provisions. Thus whereas under the Nigerian Act complaints arising from a refusal of a request lies to the courts, comparable legislation, in the United Kingdom for example, provides for the exhaustion of administrative appellate channel before complainants can go to the court. There is a risk under our Act of swamping the courts with FOI complaints. These no doubt are matters that can at an appropriate time, be taken up by the National Assembly when reviewing the Act.

18. There is no doubt also that programmes like this as well as sustained dialogue between all stakeholders should be further encouraged as we collectively engender a culture of transparency and accountability in governance.

19. I wish you all fruitful deliberations and thank you for listening.

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