A BILL
FOR
A LAW 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 THEREOF

[ ] Commencement

BE IT Enacted by the House of Assembly, of Ekiti State of Nigeria as follows-

1. This Law may be cited as Ekiti State Freedom of Information Law, 2011.

Short title

2. (1) Subject to the provisions of this Law but notwithstanding anything contained in any other Law or Regulation, every citizen of Ekiti State 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.

Right of access to Records

(2) An applicant herein need not demonstrate specific interest in the information being applied for.

(3) For the purpose of this Law, any record applied for under this Law that does not exist in print but can by regulation be produced from a machine, normally used by the government or public institution shall be deemed to be record under the control of the Government or public institution

3. (1) The head of every government of Ekiti State or public institution to which this Law applies shall cause to be published in the State Gazette a description of –

Information about Government Institutions

(a) the organization and responsibilities of the institution including details of programmes and functions of each division branch and department of the institution;

(b) all classes of record under the control of the institution in sufficient details to facilitate the exercise of the right to access under this Law;

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

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

(e) documents containing substantive rules of the institution;

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

(g) documents containing final planning policies, recommendations and decisions;

(h) documents containing factual reports, inspection reports, and studies whether prepared by or for the institution;

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

(j) documents containing the names, salaries, titles, and dates of employment of all employees and officers of the institution;

(k) documents containing the rights of the State, the public, sub-division of the state or a local government or of any private persons;

(l) documents containing the name of every official and the final record of voting in all proceedings of the institutions;

(m) files containing applications for any contract, permit, grants or agreement;

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

(o) materials containing information relating to any grant or contract made by or between the institution or another government or public institution or private organisation; and

(p) the title and address of the appropriate officers or employees of the institution to whom application for access to records under this Law should be sent, provided that the failure of the government or public institution to publish any information required to be published under this sub-section shall not prejudicially affect the right of access to public records and information in the custody of the government or public institution as provided for under this Law.

(2) The institution shall publish an update when changes occur.

(3) Any person entitled to the right of access conferred by this Law shall have the right to institute proceedings in a Court to compel the government

institution or public body to comply with the provisions of this section

(4) The government or public institutions to which this Law applies are all authorities whether executive, legislative or judicial agencies of the State Government, together with all companies in which the State or Local Government authority has a controlling interest and also private companies performing public functions.

4. An application for access to a record under this Law shall be made in writing to the government or public institution that has control of the record and shall provide sufficient details to enable an experienced employee of the institution with a reasonable effort to identify the record.

Application for access to records

5. (1) Where access to record is applied for under this Law, the head of the government or public institution to which the application is made shall, subject to Sections 7, 8, and 10 of this Law not later than fourteen (14) working days following the date of receipt of the application:

Notice where access to records are applied

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

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

(2) in counting the (fourteen) 14 working days, the date in which the fee is received by the Head of the Government or public institution is not included.

6. (1) Where the government or public institution receives an application for access to a record under this Law, and the head of the institution considers that another government or any public institution has a greater interest in the record, the head of the institution to which the application is made may subject to such conditions as may be prescribed by regulation, within three days but not later than 7 days after the application is received transfer the application, and if necessary, the record to the other government or public institution, in which case the head of the institution transferring the applications shall give written notice of the transfer to the person(s) who made the application that such decision to transfer the application can be reviewed by a Court.

Transfer of application

(2) Where an application is transferred under subsection (1) of this section the application shall be deemed to have been made to the government or public institution to which it was transferred on the day the government or public institution to whom the application was made received it.

(3) For the purpose of Subsection (1), a government or public institution has a greater interest in a record if:-

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

(b) in the case of a record not originally produced in or for a government or public institution, the institution was the first government or institution to receive the record or a copy thereof.

7. The head of every government of Ekiti State or other public institution may extend the time set out in Section 6 in respect of an application under this Law for a reasonable period of time, and in any event not exceeding seven days, if:

Extension of the limit

(a) the application is for a large number of records or necessitates a research through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government or public institutions;

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

8. (1) Where the head of government or public institution refuses to give access to a record applied for under this Law, or a part thereof, the head of the institution shall state in the notice given under section 6(a) the specific provision of this Law on which the refusal was based and shall State in the notice that the person who made the application has a right to have the decision to have it reviewed by a Court.

Where access is refused

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

(3) The head of a government or any public institution shall be required to indicate under subsection (1) whether the record exists.

(4) Where the head of a government or public institution fails to give access to record applied for under this Law or part thereof within the time limit set out in this Law, the head of the institution shall, for the purposes of this Law, be deemed to have refused to give access.

9. (1) A government or public institution shall by regulation provide that:

Fees, etc and action for waivers

(a) fees shall be limited to reasonable standard charges for document search, duplication, review and transcription where necessary, when records are applied for commercial use.

(b) fees shall be limited to reasonable standard charges for document search duplication, review and transcription where necessary, when records are not sought for commercial use and the application is made by an educational or

noncommercial, scientific, research, or a representative of the news media; and

(c) for any application described in (a) or (b) fees shall be limited to reasonable standard charges for document search, duplication, review and transcription where necessary,

(2) document shall be furnished without any charge or at a charge reduced below the fees established under section 10 (1) (b) if disclosure of the information is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the applicant.

(3) fee schedule shall provide for the recovery of only the direct cost of search, duplication, reproduction, review or transcription where the record being applied for under this Law is produced as a result of the application from a machine readable record under the control of a government or public institution.

(4) review cost shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purpose of withholding any portions exempted from disclosure under this Law.

(5) review cost may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing an application under this section

(6) no fee may be charged by any government or public institution

(a) if the cost of routine collection and processing of the fee are likely to equal or exceed the amount for the fee; or

(b) for any application described in section 9(1) (a), (b) or (c) for the first two hours of search time or for the first 100 pages of publication;

(7) no government or public institution may request advance payment of any fees although the applicant had previously failed to pay fees in a timely fashion.

(8) nothing in this Law shall supercede fees chargeable under a statute specifically providing for setting the level of fees for particular records.

(9) in any action by an applicant regarding the waiver of fees under this section, the court shall determine the matter de novo, provided that the court’s fees review of the matter shall be limited to the record before the government or public institution.

10 It shall be a criminal offence punishable on conviction with sentence to a maximum of 3 years imprisonment for any officer or the head of any government or public institution to which this Law applies to try to either willfully destroy any records kept in his/her custody or attempt to doctor or otherwise alter same before they are released to any person, entity or community applying for it.

Destruction or falsification of record

11. (1)Access to a record shall be given to the person applying for access such access in one or more of the following forms - records

Access to records

(a) a reasonable opportunity to inspect a copy of the record;

(b) In the case of a record that is an article or film from which sounds or visual images are capable of being reproduced the making of arrangements for the person to hear or view these sounds or visual images;

(c) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or which words are contained in the form of shorthand writing or in codified form, provision by the government or public institution of a written transcript of the words recorded or contained in the document.

(2) Subject to Subsection (3) of this section, where the person applying for access has applied for such access in a particular form, access shall be given in that form.

(3) if the giving of access in the form applied for by the person

(a) would interfere unreasonably with the operations of the government or public institution, or the performance by any officer or employee thereof of his functions;

(b) would be detrimental to the preservation of the record or, having regard to the physical nature of the record, would not be appropriate; or

(c) would, but for the provisions of this Law, involve an infringement of copyright (other than copyright owned by the State or local government, or a government or public institution thereof) subsisting in matter contained in the record, being matter that does not relate to the affairs of a government or public institution, access in that form may be refused and access shall be given in another form.

(4) subject to subsection 13(1), where a person applies for access to a record in a particular form and, for reasons specified in subsection (3) hereof, access in that form is refused but access is given in another form, the person applying for access shall not be requested to pay a charge in respect of the provision of access to the record that is greater than the charge that he would have been required to pay if access had been given in the form applied for.

12 Where an application is made to the government or public institution and the information sought for is not available in discrete form, the institution should make the information available in a discrete form.

Where information is not available in discrete form

13. (1) The government or public institution may refuse to disclose any record, the disclosure of which may be injurious to the conduct of international affairs of the State and defence.

State affairs and defence

(2) However, in the interest of the public the court may override the refusal by the head of the government or public institution to disclose the information applied for.

Law enforcement

14 (1) The government or any public institution may refuse any information applied for, the disclosure of which would:

and investigations

(i) interfere with pending or actual and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency.

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

(iii) deprive a person of a fair trial;

(iv) disclose the identity of a confidential source;

(v) constitute an invasion of personal privacy; however, where the interest of the public would be better served by having such record being made available, this exemption to disclose shall not apply;

(vi) obstruct an ongoing criminal investigation

(vii) information the disclosure of which could reasonably be injurious to the security of the State.

(2) The government or public institution may refuse to disclose any "information which could reasonably be expected to facilitate the commission of an offence.

(3) For purpose of this section, "Investigation" means an investigation that:

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

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

15. The heads of a government or public institution may refuse to disclose any information that contains-

Economic interest of the Federal Republic of Nigeria

(a) trade secret, financial, commercial, or technical information that belongs to the government that has substantial economic value or is likely to have substantial value;

(b) materials that could reasonably be expected to prejudice the competitive position of a government or public institution;

(c) scientific or technical information obtained through research by an officer or employee of a government or public institution which could deprive the officer or employee of priority of publication; or

(d) information the disclosure of which could reasonably be expected to be materially injurious to the financial interest of Ekiti State or Local Government thereof, or the ability of the State or Local Government to manage its economy, or could reasonably be expected to result in an undue benefit to any person including but not limited to the following information:

(i) a contemplated charge in the rate of banks interest or in government borrowing;

(ii) a contemplated charge in tariff rates, taxes, duties or any other revenue sources;

(iii) a contemplated charge in the conditions of operation of financial institution;

16. Subject to subsection 2, the head of a government or public institution shall refuse to disclose any record applied for that contains personal information, information exempted under this sub-section shall include:

Personal Information

(i) files and personal information maintained with respect to clients, patients, residents, students, other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly from federal agencies or government or public institution;

(ii) personnel files and personal information maintained with respect to employees, appointees or elected officials of any government or public institution or applicants for such positions;

(iii) files and personal information maintained with respect to any applicant, registrar or licensee by any government or public institution cooperating with or engaged in professional or occupational registration, licensure or discipline;

(iv) information required of any tax payer in connection with the assessment or collection of any tax unless disclosure is otherwise applied for by state statute; and

(v) information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies.

(2)The head of a government or public institution may disclose any record applied for that contains personal information if -

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

(b) the information is publicly available.

(3) Where disclosure of any information referred to in this section would be in the public interest, and if the public interest in the disclosure of such information clearly outweighs the protection of the privacy of the individual to whom such information relates, the head of the government or public institution to whom an application has been made shall disclose such information subject to Section 14 (2) of this Law.

Third party information

17. (1) Subject to this section, the head of a government or public institution shall refuse to disclose any record applied for under this Act that contains-

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

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

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

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

(3) Where the head of a government or public institution discloses a record applied for under this Act, or a part thereof, that contains the result of a product or environmental testing, the head of the institution shall at the same time as the record or part thereof is disclosed provide a person who applied for the record with a written explanation of the methods used in conducting the test.

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

Advice etc

18. (1) The head of a government or public institution may refuse to disclose any record applied for, that contains preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion thereof shall not be exempted when the record is publicly cited and identified by head of the government or public institution. The exemption provided in this subsection extends to all those records of officers and agencies of National or State Houses of Assembly, which pertain to the preparation of Legislative documents.

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

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

(b) a report prepared by a consultant or any adviser who was not, at the time the report was prepared, an officer or employee of a government or public institution or a member of staff of a Ministry of the Federal Government or Commissioner of a State Government.

Legal practitioner/client privilege

19. The head of a government or public institution may refuse to disclose any record applied for that contains information that is subject to Legal Practitioner-Client privilege.

20.	The head of a government or public institution may refuse to disclose any record applied for which contains course materials or research prepared by faculty members.	Course or Research Materials
21.	Notwithstanding any other provision of this Law, where application is made to a government or public institution for access to record that the head of the institution is authorized under this Law to refuse to disclose by reason of information or other material contained in the record, the head of the institution shall disclose any part of the record that does not contain, and can be severed from any part that contains any such information or material.	Severability
22. (1)	Any person who has been refused access to a record applied for, or part thereof may apply to the Court for a review of the matter within thirty days after the head of the government or any public institution has refused or is deemed to have refused the application, or within such further time as the Court may either before or after the expiration of those thirty days fix or allow. (2) An application made under this section shall be heard and determined summarily.	Judicial review
23.	The head of a government or any public institution in Ekiti State may refuse to disclose any record applied for that contains information pertaining to: (a) test questions, scoring keys and other examination data used to administer an academic examination or determine the qualifications of an application for a license or employment; (b) architects' and engineers' plans for building not constructed with public funds, to the extent that disclosure would compromise security; and (c) library circulation and other records identifying library users with specific materials	Refusal by Head of Government or public institution to disclose records
24.	Notwithstanding anything contained in any other Law or enactment or any privilege under the law of evidence, the Court may, in the course of any proceedings before the Court arising from an application under Section 22 of this Law, examine any record to which this Law applies that is under the control of government or public institution and no such record may be withheld from the court on any ground.	Access to record by Court
25.	In any proceedings before the Court arising from an application under Section 22, the Court shall take precaution, including when appropriate, receiving representations ex-parte and conducting hearings in camera to avoid the disclosure by the Court or any person of any information or other material on a basis of which the applied for, or part thereof may apply to the Court for a review of the matter within thirty days after the head of the government or public institution has refused or is deemed to have refused the application, or within such further time as the Court may either before or	Court to take precautions against disclosing information

heads of a government or any public institution will be authorized against to disclose a part of a record requested under this law.

Burden of proof

26. In any proceedings before the Court arising from an application under Section 22, the burden of establishing that the head of a government or public institution is authorized to refuse to disclose a record under this Law or a part thereof shall be on the government or public institution concerned.

Order to disclose Information

27. (1) Where the head of a government or any public institution refuses to disclose a record applied for or a part thereof on the basis of a provision of this Law, the Court shall order the head of the institution to disclose the record or part thereof to the person who applied for access to the record:

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

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

(iii) where the court makes a finding that the interest of the public in having the record being made available is greater and more vital than the interest being served if the application is refused.

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

Exempted materials

28. This Law does not apply to:-

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

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

(c) material placed in the State Library, Museums or the non-public section of the Archives on behalf of any person or organization other than a government or institution.

Protection of public officers ,

29. (1) Notwithstanding anything contained in the Criminal Code, Penal Code, the Official Secrets Law, or any other enactment, no civil or criminal proceedings shall lie against any government or public institution, or against any person acting on behalf of the government or public institution, and no proceedings shall lie against the State or Local Government or any institution thereof, for the disclosure in good faith of any record or any part of a record pursuant to this Law, for any consequences that flow from that disclosure, or for the failure to give any notice required under this Law, if care is taken to give the required notice.

(2) Nothing contained in the Criminal Code or the Official Secrets Law shall prejudicially affect any public officer who, without authorization discloses to any person, any public record or information which he reasonably believes to show-

(a) a violation of any law, rule or regulation;

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

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

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

30. (1) The fact that any record in the custody of government or public institution is kept by that institution under security classification or is classified document within the meaning of the Official Secrets Law does not preclude it from being disclosed pursuant to an application for disclosure thereof under the provisions of this Law, but in every case the head of the government or any public institution to which an application for such record is made shall decide whether such record is of a type referred to in Sections 14, 15, 16, 17, 18, 19,20 or 21 of this Law,

Documents under security Classification

(2) If the head of government or public institution to which the application for a record mentioned in subsection (1) is made, decides that such record is not a type mentioned in the sections referred to in subsection (1) thereof, access to such record shall be given to the person who made the application.

(3) if the head of the government or any public institution to which the application for a record mentioned in subsection (1) is made decides that such record is of a type mentioned in the sections referred to in subsection (1) hereof, he shall give notice to the person applying for the record.

31. (1) On or before February 1 of each year, each department of government or public institution shall submit to the Attorney General and Commissioner for Justice a report which shall cover the preceding fiscal year and which shall include:

Submission of Reports

(a)the number of determinations made by the Government or Public Institution not to comply with applications for records made to the Government or Public Institutions under this Law and the reasons for each such determinations;

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

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

(d) the number of applications for records pending before the Government or Public Institution as of October 31 of the preceding year and the median number of days that such applications had been pending before the Government or Public Institution as of that date;

(e) the number of applications for records received by the Government or Public Institution and the number of applications which the government or public institution processes;

(f) the median number of days taken by the government or public institution to process different types of application;

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

(h) the number of fulltime staff of the Government or its agencies devoted to processing applications for records, or the total amount expended by the Government or Public Institution for processing such applications.

(2) Each government or public institution shall make its report available to members of the public, including by online and by other electronic means.

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

(4) He shall notify the State House Assembly not later than April of the year in which such Report is issued, that such reports are available by electronic means.

(5) The Attorney-General and Commissioner for Justice shall develop reporting and performance guidelines in connection with reports required by this section and may establish additional requirements for such reports as he may determine.

(6) The Attorney-General and Commissioner for Justice shall submit to the State House of Assembly an annual report on or before April 1 of each calendar year which shall include for the prior calendar a listing of the number of cases arising under this Law the exemption involved in each case, the disposition of such case and the cost, fees, and penalties assessed.

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

(8) for purposes of this section, the term

(a) government includes any executive department, agencies, government controlled agencies, or other establishment in the executive branch of the government (including the Executive office of the Governor), or any other independent regulatory government or public institution; and

(b) record' means any terms used in this Law in reference to information which includes any information that would be government or public institution in any format, including an electronic format.

Complimentary procedures

32. (1) This Law is intended to complement and not replace existing procedures for access to public records and information and is not intended to limit in any way access to those types of official information that have, hitherto, been normally available to the general public.

(2) Where the question whether any public or information is to be made available, where that question arises under this Law the question shall be determined in accordance with the provisions stated herein, unless otherwise exempted by this Law.

33. In this Law, unless the text otherwise requires:-

Interpretations

"Court" means a State High Court.

"Public/Government Institution" means any legislative, executive, judicial, administrative or advisory body of the State and Local Governments, boards, bureau, committees or commissions of the State, and any subsidiary body of those public bodies including but not limited to committees and sub-committees which are supported in whole or in part by public fund or which expends public fund and private bodies carrying out public functions;

"Public record or document" means a record in any form having been prepared, or having been or being used, received, possessed or under the control of any public or private bodies relating to matters of public interest and includes –

(a) any writing on any material;

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

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

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

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

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

"Personal information" means any official information held about an identifiable person; but does not include information that bears on the public duties of public employees and officials.

EXPLANATORY MEMORANDUM

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

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.