

**NIGERIA'S FREEDOM OF INFORMATION ACT (2011)**

**WIGEDINR FREEDOM OF INFORMATION ACT (2011)**



# **COMPLIANCE ASSESSMENT REPORT 2016**

## **EXECUTIVE SUMMARY**

A Report on the status of Public Institutions compliance with the obligation to Proactively disclose Information and Submit FoIA report annually to the office of the Attorney General of the Federation under Section 2 (3), & 4 and Section 29 (1-3) respectively of the Freedom of Information (FoA) Act, 2011

## **EXECUTIVE SUMMARY**

### **Context And Objectives**

Year 2016 is significant in two ways; first, it marks five years of enactment of an Access to Information legislation in Nigeria known as Freedom of Information (FOI) Act 2011; second, it climaxed on 28<sup>th</sup> September with the celebration of the very first International Day for Universal Access to Information. Both events form a cohesion that reflects ***Right To Know (R2K), Nigeria's*** institutional attachment and commitment as well as the need for a determination of what has occurred or has failed to occur so far with the implementation of the FOI Act in the country. This report represents an attempt in that perspective. It aims to assess public institutions compliance with two key provisions of the Act; notably, Section 2(3 &4) relating to the provision on ***Proactive Disclosure***—a term that describes the duty of Public institutions as defined by the Act to willingly publish, disseminate, update and review information on their initiative without a request --; and Section 29 (1,2 &3) obligating an ***FOI Annual Submission*** to the Office of the Attorney-General of the Federation (AGF) on or before every 1<sup>st</sup> of February—i.e. a report covering all FOI related matters from the preceding fiscal year--.

### **Scope And Relevance**

This assessment report covers the following:

- Identifies public institutions (Ministries, Departments Agencies - MDA's) to ascertain their level of **proactive disclosure** in 2016, building on an initial similar written work titled *Report on Proactive Disclosure Assessment* (<http://r2knigeria.org/index.php/publications/proactive-disclosure-assessment-report>) undertaken by R2K, Nigeria released in the year 2015 that revealed significant non-compliance by public institutions with the proactive disclosure mandate under the Act, and;
- Public institutions that made **FOI Annual Submissions** to the office of the AGF between 2014-2016 covering relevant preceding years respectively.

The Freedom of Information Act has largely been regarded as a crucial piece of legislation that has now been in existence in Nigeria for five years. Emanating from the importance of the Act itself, the relevance of this report lies primarily in the

commitment to establishing a *'culture of writing our own stories'*. The field of Information as a right is fast growing; its resources, processes and outcomes are unfolding to concrete results. There is a need for local constituencies (Nigerian facilitators) to publish their content development. Additionally, the relevance of this reports lies in the effort to bring to the fore the level of compliance, if any, that has been achieved, taking advantage of the 5<sup>th</sup> anniversary in 2016 of this crucial law. Finally, this report provides an update for an initial similar report on key aspects of proactive disclosure. Overall, it serves as a gift to celebrate Freedom of Information in Nigeria and a humble attempt to mitigate early the usual gap in documentation for governance and development.

## **Methodology**

The report employs two distinct methods to arrive at its findings. The first, method relating to the assessment by 2016 of proactive disclosure under **Section 2** of the Act, sourced information available on the **website** of **44 public institutions** reviewed. Ratings between **below average** to **excellent** were applied with corresponding percentages and a nil to situation in which the information expected on the website is not available at all. The selected public institutions were those that made submission of their FOI Annual report to the Office of the Attorney General of the Federation with an **assumption** that they would as well achieve quite a level of adherence to expected proactive disclosure information in their respective site. The second, an assessment on the level of compliance to **Section 29**, analysed the number of submissions the AGF's office recorded over the five year period of the Act against key indicating compliance benchmarks with a view to observe trend over the years. These reports were requested and received in hard copies at no cost by the researchers during their scheduled visit to the office of the AGF.

## **Challenges/Constraints**

On proactive disclosure, key challenge include inadequate website record creation and updates by public institutions. Available information is significantly not in line with the protocols, categories and format required by the Act. Disturbingly, rare updated information is usually centred on the Head of the public institution and does not relate to or embedded with the provisions of the freedom of information. Blank pages and broken links are replete with most websites reviewed.

One challenge stood out on the process of assessing FOI annual reports submitted to the AGF. The reports are bulky and available only in hard copies.

## **Findings/Results**

**Proactive Disclosure-** Information disclosure by 43 public institutions out of the 44 reviewed did not comply with Section 2 (3 a-f) of the FOI Act 2011; these institutions have neither taken advantage of ICT platforms to diversify and expand internet avenues for proactive disclosure. 23 out of them were below average, 13 averages and 6 above average (Department of Management Office Nigeria, Nigeria Export Promotion Council, Federal Road Safety Corps, Economic and Financial Crimes Commission, Nigerian Communications Commission and Legal Aid Council)

The bottom performance rated nil, i.e. having disclosed only one category of information provided by the Act relating to *classes of record held by the institution*. Two public institutions lamentably fall within this worst rating; the Council of Legal Education which does not have a website and National Primary Health Care Development Agency which poorly discloses on only one out of the 16 classes of information in accordance with the Act. (*Refer to fuller detail in Annexure 1 of the full report*)

However, the Report hails the Bureau of Public Service Reforms (BPSR). BPSR as at the time of publishing this report, remains the only public institution that receives an **excellent** rating, meaning the institution fully complied with the proactive disclosure provisions of the Act, by publishing all classes of information required in Section 2 of the Act. BPSR is currently the only public institution in Nigeria with a website that includes a dedicated Freedom of Information portal, with the provision to receive and respond to electronic FOI request online.

This achievement by BPSR is the singular feature that distinguished the earlier report on proactive disclosure compliance and this current report undertaken in 2016.

## **FOI Annual Report To The Office Of The AGF**

In the five year since the enactment of the FOI Act, there have been 3 submissions of FOI annual reports by public Institutions to the AGF's Office; 2014, 2015 and 2016 each covering the preceding year. Years 2014, 2015 and 2016 recorded respectively

47, 60 and 44 submissions. The momentum of submissions dropped in 2016 and there have been discrepancies in previous submissions. Only 31 out of the 47 public institutions that submitted reports in 2014 went on to submit their FOI annual report in 2015, while 15 out of the same 47 were consistent in also submitting reports in 2016.

In the same vein, only 27 out of the 60 FOI annual submissions made in 2015 went on to submit their annual FOI reports in 2016. On the average, the AGF's report indicated that it took 4 to 7 days for these public institutions to process request for information; this number of days is reflected in the three years covered by this Report. However the Ministry of Foreign Affairs remains the exception in the time frame for processing request, taking a record 120 days as reported in the AGF's 2014 Report. The Federal Ministry of Works in the same vein took 120 days to process FOI request as reported in AGF's 2015 Report. There is a significant improvement in the number of FOI dedicated desk officers from 43 out of the 47 institutions having a least one desk officer in 2014 to 58 out of 60 institutions having at least one desk officer in 2015 and all the 44 institutions that submitted FOI annual reports in 2016 had an FOI desk officer.

## **Recommendations**

1. ICT use has largely been a determinant to success in compliance as it maximise reporting capacity, cost efficiency, timeliness and easy access. Public institutions should therefore expand partnership to maximise the use of ICT, exploring non-for profit partnership model like BPSR –R2K partnership;
2. The office of the Attorney General of Federation as part of its core responsibility of ensuring public institutions comply with the FOI Act, should explore developing possible sanctions for defaulting public institutions with the provisions of the Act and creative incentives for institutions who have maintained consistency with submissions of their FOI annual reports and other aspects of the Act.
3. The heads of public institutions should demonstrate political will towards ensuring proactive disclosure in their respective institutions which would help enhance the current administration's anticorruption stance and foster open governance.
4. Regular trainings, re-orientation and capacity building be conducted for public institutions on understanding and compliance with the Act as part of both

partnership and their regular sessions using among others the Act itself, Right To Know FOI Training Curriculum mainstreamed in the 3 training public institutions in Nigeria, AGF's FOI Implementation Guidelines and other Freedom of information tools;

5. Oversight institutions like the Office of the Attorney-General at the Federal and State levels and relevant parliamentary Committees be spurred to be active to their responsibilities for ensuring the implementation and compliance with the Act;
6. The Bureau for Public Service Reforms (BPSR) has set a remarkable benchmark achievement in proactive disclosure worthy of note. Public institution should therefore emulate best practices and peer learning as part of the process for the attainment of open government standards.