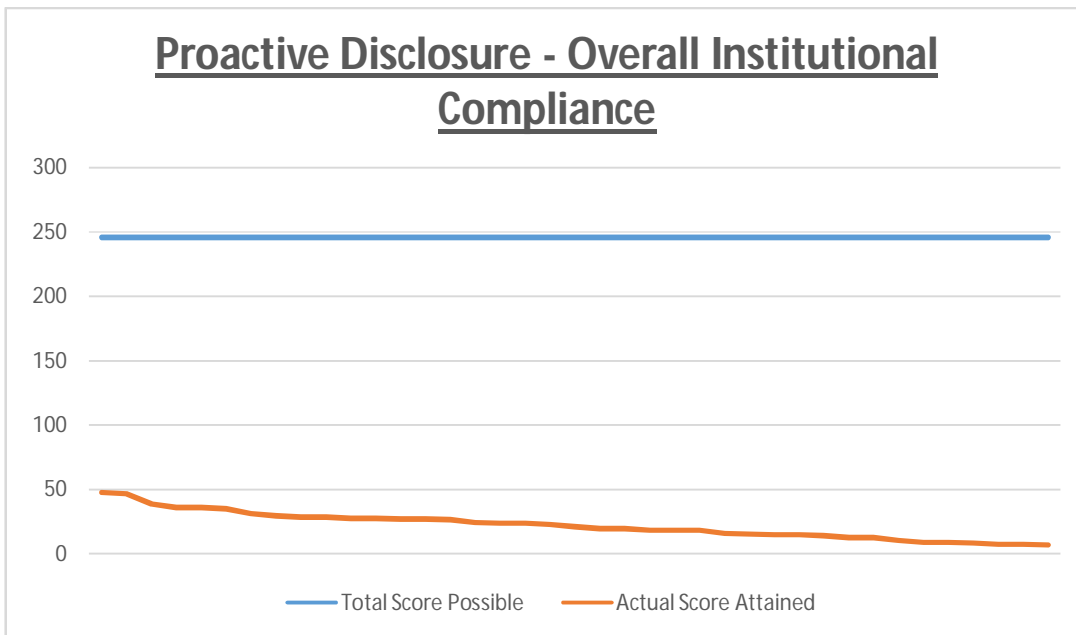




Proactive Disclosure Assessment Report (Executive Summary)



A Report on the Status of Public Institutions' Compliance with the Obligation to Proactively Disclose Information under Section 2(3) & (4) of the Freedom of Information (FOI) Act, 2011

INTRODUCTION

This report presents the findings of an assessment undertaken by Right to Know (R2K) Nigeria, of the implementation of the obligation of proactive disclosure in the Freedom of Information (FOI) Act. In undertaking this assessment, R2K reflects the belief that Proactive Disclosure is the foundation of the FOI regime and the basis of open government, which is an obligation well founded in Nigeria's Constitution.

Openness in government is hinged on the constitutional premise that government is established by the people, owes its legitimacy to them and should be accountable to them. It holds that the public has a right and a duty to hold its government accountable for its policies, projects and activities, and that the public should have access to information, documents and proceedings of government for effective public oversight, and promotes and enhances democratic principles, including representative government; citizen participation; equality; government accountability; transparency; and the rule of law and due process.

This duty of the government to be open is the basis of the right to information, recognised in S. 14 of the Constitution and operationalized through the Freedom of Information (FOI) Act, which was passed into law on 28 May 2011 by then President Goodluck Jonathan. The FOI Act prescribes two major mandatory mechanisms for making information available to the public – the reactive disclosure – which is by responding to information requests; and the proactive disclosure – which is information that must be disclosed as a matter of administrative routine, without waiting for an information request. **Proactive disclosure** is the focus of this assessment.

Section 2 (3) of the FOI Act outlines a core set of information categories which must be proactively disclosed. In summary, the FOI Act requires the publication by all public institutions as defined under the FOI Act, of all records and information relating to the relevant public institution's activities, services, finances, decisions, policies and procedures, contracts, etc. The FOI Act prescribes what is to be disclosed. It also prescribes various modes for effecting proactive disclosure, in order to ensure as broad dissemination as possible.

The Act requires that the published information should be available through various media, easily accessible, relevant to a range of potential users, comprehensible and clearly

presented and understandable including for those with physical or literacy challenges, free or low-cost, and up-to-date.

Notably, all provisions of the FOI Act, including the obligation to proactively disclose, are enforceable where there is non-compliance.

THE RESEARCH

Right to Know (R2K) Nigeria conducted an 11-month assessment of the level of institutional compliance with the Proactive Disclosure obligation in accordance with Section 2 (3) & (4) of the Freedom of Information (FOI) Act. A total of 39 government MDAs were assessed, with a sampling frame of those government MDAs that have taken the commendable strides to meet their statutory obligation to submit annual FOI Compliance reports to the Office of the Attorney General's office in 2012 or 2013, in compliance with Section 29 of the FOI Act. This sampling frame was selected on the assumption that government MDAs that have not made any attempt to comply with their obligations under Section 29 are not complying with their obligations under Section 2. The primary data gathering instrument was a questionnaire/survey derived from the listed information that should be proactively disclosed under Section 2 (3) of the FOI Act. Data was collected through monthly physical visits to the public institutions' offices in Abuja, and online searches of the websites of the surveyed public institutions. The survey was carried out monthly over a period of 11 months, from February 2014 to December 2014.

SUMMARY OF FINDINGS

Overall Compliance

Compliance with the proactive disclosure obligation under section 2 (3) & (4) is very low, with none of the institutions assessed attaining up to 20% compliance. There is a very low rate of compliance with the obligation to proactively disclose information. The average level of compliance was 9.35%, with Federal Ministry of Justice attaining the highest score of for compliance of 19.52%, while Nigeria Football Federation attained the lowest score of 2.96%.

Assessing Disclosed Content (Section 2 (3))

Where there has been disclosure, it is limited, perfunctory information such as the institutions' organogram, its structure and functions; as well as highlighting some events and activities conducted by the various institutions. In this regard, the level of disclosure has not changed after the law came into force. Relatively more sensitive and specific information was not disclosed overall. Additionally, while the Act requires that public institutions proactively disclose the Contact Details of Institution's FOI Officer, only 3 institutions made varying degrees of proactive disclosure namely, the National Orientation Agency (NOA), the National Youth Service Corp (NYSC) and the Police Service Commission (PSC). The National Planning Commission lists the information of its FOI Committee members. All institutions made this disclosure online. Note, however, that the FOI Act clearly stipulates that the failure of any public institution to publish the title and address of the appropriate officer cannot limit the exercise of the public's right to information.

Assessing Disclosure Methods (Section 2(4))

The survey also showed an underutilization of the prescribed methods of disclosure, including online, in hard copy, print and electronic methods, as well as at the offices of the institution. However, the primary disclosure methods are online, and in hard copy obtained from the offices of the institution. However, neither method of disclosure is

being optimized to meet the standard of wide dissemination as prescribed under Section 2 (4) of the FOI Act.

With regards to online disclosure, while the majority of MDAs (85%) do maintain an official website, this medium is underutilised as a medium for proactive disclosure. Of the institutions assessed, 33 have a functional official website, while 6 do not. However, rarely does the information provided on the website exceed a level of compliance with Section 2 (3) (a) of the FOI Act, and most disclosures are limited to basic information about the structure and general functions of the relevant institution. Accessing information on and navigation of the websites is cumbersome, existing websites do not have a designated FOI portal or information schedule that facilitates ease of accessing and understanding information.

Reasons for Low Compliance Rates

Part of the challenges to proactive disclosure either reported or observed include a lack of archival and record-keeping practice in a manner that facilitates access surely impedes effective compliance. Largely, the lack of a cohesive, organised and electronic document management system, and inadequate intra-institutional information sharing practices pose the biggest obstacle to providing information, both proactively and in response to information requests. This highlights the importance of developing and adequately funding record-keeping infrastructure.

The findings also showed that many institutions have not adequately trained their staff on the FOI Act, although the FOI Act itself specifically mandates routine and continuous training of officers and staff of MDAs under Section 13. Thus, the staff and officers of the institutions do not have the requisite training to ensure successful implementation of the FOI Act, including understanding and meeting their proactive disclosure obligations.

It is important to acknowledge that in addition to the infrastructural challenges, there is also an attitudinal opposition and resistance to proactive disclosure. Even where some effort has been made towards proactively disclosing information, such disclosure does not extend to information of public remuneration, in spite of the legal obligation to do disclose such.

Also, in spite of the enforceability of all provisions of the FOI Act, there have been no demanding for lack of enforcement of the proactive disclosure provisions.

RECOMMENDATIONS

There is need for Information to be arranged in a clearly identifiable, and easily navigable schedule, guided by the FOI Act, and recommendations of the AGF within his regulatory powers. There is also a clear need to embed records management in the public sector and to develop recommendations regarding record-keeping and data management from best practice examples of developing countries that have already acquired experience.

Public sector funding and capacity building is required to ensure the necessary record-keeping infrastructure. Furthermore, appropriate protocols for routine information-sharing as necessitated by the FOI Act should be developed and adopted within public institutions. In this wise, the distinct processes of proactive disclosure and processing information requests must be distinguished, and processes developed for both. It is also required that public institutions need to train staff and officers on the FOI Act (which is a statutory obligation under Section 13 of the FOI Act) on all components of the Act, including records management, and proactive disclosure.

In terms of disclosure content, public institutions should ensure full disclosure of all the classes of information prescribed under Section 2 (3) (a-f) of the FOIA. Regarding disclosure methods, public institutions should explore and take advantage of the diverse platforms and technologies to expand the avenues for proactive disclosure provided under the Act.

Finally, the public should utilise all available remedies to compel compliance by public institutions with the provisions of the FOI Act generally, including the obligation to proactively disclose information.

CONCLUSION

This survey shows significant public sector non-compliance with the proactive disclosure mandate under the FOI Act. Bearing in mind that proactive disclosure is an integral component of an FOI regime, and forms a core aspect for the success or failure of the

efficient and effective implementation and sustainability of such a system, active steps must be taken to overcome the challenges that hinder compliance - including increasing infrastructural capacities, and the transformation of mind-sets to realize the inherent value of FOI, and the cost implications of non-compliance.

To be successful, implementation of the FOI Act must be holistic and across board since every obligation created under the Act has a vital role in ensuring that the right of the public to information is duly exercised. Therefore, the imperative for the public and civil society to demand for compliance with the provisions of the FOI Act by public institutions cannot be overemphasised. There is danger in allowing the FOI Act to remain simply a paper legislation, and not allowing the promotion of meaningful access to information. Citizens should protect their right to accountable government through the full expression of their right to information, by demanding for implementation of all aspects of the FOI Act.

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