

HAGF/MDAS/FOIA/2012/I

FROM: **HONOURABLE ATTORNEY GENERAL OF THE FEDERATION
AND MINISTER OF JUSTICE**

TO: **ALL MINISTRIES, DEPARTMENTS AND AGENCIES; AND
ALL PUBLIC INSTITUTIONS FOR THE PURPOSE OF THE
FREEDOM OF INFORMATION ACT 2011 (FOIA)**

SUBJECT: **IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT
2011 AND THE REPORTING REQUIREMENTS UNDER SECTION
29 THEREOF**

Introduction

The Freedom of Information Act 2011 (the Act) came into operation on 28th May 2011. Under Section 1 of 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 as specified under section 2 of the Act. The Act reflects our nation's fundamental commitment to open government. This circular is meant to underscore that commitment and to also ensure some standardization in the format of reports.

2. The Act defines “public institutions” as all authorities whether executive, legislative or judicial agencies, ministries, and extra-

ministerial departments of the government, together with all corporations established by law and all companies in which government has a controlling interest, and private companies utilizing public funds, providing public services or performing public functions.

Reports under section 29

3. By virtue of section 29 of the Act, all public institutions must on or before February 1 each year submit to the office of the Attorney General of the Federation a report containing the following details:

- (a) the number of determinations made by the public institution not to comply with applications for information made to such public institution and the reasons for such determinations;
- (b) the number of appeals made by persons under this Act, and the reason for the action upon each appeal that results in a denial of information;
- (c) a description of whether the Court has upheld the decision of the 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 information pending before the public institution as of October 31 of the preceding year and the median number of days that such application had been pending before the public institution as of that date;

- (e) the number of applications for information received by the public institution and the number of applications which the public institution processed; .
- (f) the average number of days taken by the public institution to process different types of application for information;
- (g) the total amount of fees collected by the public institution to process such applications; and
- (h) the number of full-time staff of the public institution devoted to processing applications for information, and the total amount expended by the public institution for processing such applications.

4. Section 29 of the Act also requires the Honourable Attorney General of the Federation to publish these reports electronically and in print and submit copies to relevant committees of the National Assembly not later than April. In addition the Attorney General of the Federation is expected to compile a report on overall compliance with the Act for submission to the National Assembly on April 1 each year. In order therefore to ensure uniformity in the form and style for reports, public institutions should use the attached form for the purpose of submission to the Office of the Attorney General of the Federation.

5. A Public institution must submit a report even if a nil entry is recorded under all or any of the sub-paragraphs in paragraph 3 above. All reports should be in **Microsoft Excel** format and must in accordance with the Act, be submitted on or before February 1:

- (a) electronically, via the following email address – foi.justice@fmoj.gov.ng; and
- (b) in hard copy, to Room 5E 07, 5th Floor, Federal Ministry of Justice, Headquarters Building, Maitama FCT, Abuja.

Compliance and enforcement

6. 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 nonexempt information. Even if some parts of a record must be withheld, other parts may either not be covered by a statutory exemption, or may be covered only in a technical sense unrelated to the actual impact of disclosure.

7. At the same time, 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. But as the President has emphasized, **"The government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."**

8. Open government requires agencies to work proactively and respond to requests promptly. Public institutions are enjoined to use modern technology to inform citizens of what is known and done by

their 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. When information not previously disclosed is requested, agencies should make it a priority to respond in a timely manner. Timely disclosure of information is an essential component of transparency. Long delays should not be viewed as an inevitable and insurmountable consequence of high demand.

9. 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. A Public institution should consider designating a senior official (at the Assistant Director level or its equivalent) or establishing an FOI Unit with direct responsibility for determinations and compliance with the Act

10. In this regard, I advise that public institutions should assign a tracking number to each request and provide that tracking number to the person making the request. In addition, public institutions must establish a telephone line or Internet service that persons requesting information under the Act may use to inquire about the status of their requests.

Furthermore, I encourage Public institutions to take advantage of the FMOJ-FOIA resources. The FMOJ will provide training and additional guidance on implementing these circular and subsequent guidelines. In addition, public institutions should freely consult with FMOJ CFOI officer whenever the need arises

11. A Public Institution should in addition, note that under the Act the submission of a report to the Attorney General, does not absolve the institution from proactively disclosing electronically or through other means information and records relating to its administrative machinery and general operations to the public as outlined under section 2 of the Act.

Furthermore, the obligation to submit a report to the Attorney General is additional to the obligation to make such report directly available to the public electronically; for example by publishing the report on its website.

DATED THIS 29th DAY OF JANUARY, 2012

MR. MOHAMMED BELLO ADOKE, SAN CFR
HONOURABLE ATTORNEY GENERAL OF THE FEDERATION AND
MINISTER OF JUSTICE