



## **Challenges to Protection and Management of Official Records in the Era of Freedom of Information Law in Nigeria**

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### **Abstract**

Official records and data of strategic value are generated daily in government service through files, electronic mails and in computer sets in the course of governance and administration of the State. These official records and data are necessary ingredients for policy making and policy implementation process in government. Large numbers of these official records and data are sensitive in nature hence requires protection for State's security and in the public interest in spite the press freedom guaranteed by the 1999 Constitution and the freedom of information law. This paper examines challenges facing the protection of official records, data privacy and record management despite the freedom of information Act (2011). The issues of leakages of official memoranda; theft and burning of records; hacking and the problems of conflicts between subsisting laws on secrecy and protection of official records and some relevant provisions of the freedom of information law were extensively analysed, with a view to striking a balance between the necessity for protection of official records and data privacy for security and public interest; and the increasing needs for transparency and accountability in democratic dispensation which the freedom of information laws seeks to achieve in Nigeria's fourth republic. The study is anchored on the record continuum theory and it adopted a qualitative based-content analysis as well as the literature-review approach to examine and analyse existing laws and challenges relating to protection of official records, data privacy and record management in this era of freedom of information law.

**Key Words:** Protection, Official Records, Record Management, Freedom of Information Law.

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## Introduction

In any organization-public or private, protection of records is necessary for smooth operations and in government, official records are necessary for running and administering government institutions and offices. Under the current fourth republic, freedom of information Act is enacted to ensure public policies and decisions are brought in the open for the citizens to make their own input (Abiola, 2011). The press usually strives to prosecute free access to government policies and records. The freedom of information Act therefore serves as consolidation to press freedom under the current democratic dispensation of the fourth republic as it was enacted to guarantee access by the general public to data held by its government. The Act establishes a 'right-to-know' legal process by which request may be made for government-held information to be received freely or at minimal cost barring standard exceptions and to promote democracy (Odigwe, 2011).

The underlying philosophy of Freedom of Information Act is that public servants are custodians of a public trust on behalf of the people, who have a right to know what they do. The Act seeks to change the manner in which official records and information are managed and build-on the presumption of openness, by placing on those who wish to keep public information away from the people, the onus of justifying why they have to do so. The Act which assented, on 28th day of May, 2011 by President Goodluck Jonathan gives a person, group, association or organization the right to access information from government agencies, parastatals, civil service, private and public sector organizations providing public services. The request for information under the Act must be made in writing, with a clear description of the information being sought and in compliance with the specific institutional requirements. In the opinion of Onah (2011), freedom of information laws gives citizens and other interested parties the right to access documents or information held by the government without being obliged to demonstrate any legal interest.

However, the freedom of information Act in its own way, also, seeks to protect official records. Firstly, its section 12 provided some exemptions of classified information from disclosure and public access by public institutions. The clause amounts to a replica of the provision of previous laws such as Official Secret Act (1962), which protects official records. Secondly, certain



provisions of the Act such as section 7(5) also makes it a criminal offence to destroy or falsify records and documents. Inferentially, this means the Act also seek to protect official records like other previous laws before it.

Nevertheless, the Freedom of Information Act created new sets of challenges to protection and management of official records in Nigeria. The Author's practical experience in public service shows that protection and management of official records is confronted with such challenges like poor record keeping, theft and burning of records, leakages of memoranda, piracy and hacking of electronic documents, existence of subsisting Official Secret Act, Evidence Act, Statistics Act and Criminal Code Act and public service rules on oath of secrecy, all of which seeks to protect official documents despite the freedom of information Act(2011).

Notwithstanding the other provisions of freedom of information Act that allows public access to official records, constitutional guaranteed access to information would be mirage if record protection and management mechanisms are not in place. Therefore, adequate enforcement of the freedom of information Act may not be effective until public institutions develop proper record management system where official records are created, organized and kept safely for operational efficiency of government institutions. In government, record keeping is one of the fundamental activities of public service and without records, there can be no accountability and rule of law, as it is through records that evidence-based public policies are made and implemented for the betterment of the citizenry. Equally, protection of official records is therefore crucial to institutional memory and evaluation of government policies, and this ought to be the basis of freedom of information Act. In fact, it is only on this trajectory that public institutions can willingly provide information proactively about their operations in line with the intent and mandate of the freedom of information Act. Based on this, the objectives of this study is to examine the challenges to protection and management of official records in the era of freedom of information law in Nigeria.

### **Conceptual analysis**

For proper understanding of the issue under interrogation, the concepts of record management and protection of records were analyzed. Firstly, in this work, a record is information created or



received and maintained by the organization or institution. It is any written, photographic, machine-readable, or other recorded information created or received by or on behalf of the Institution that document the activities of the organization or institution. Records includes books, letters, documents, printouts, photographs, film, tape, photostat, sound recordings, maps, drawing and a voice; data or video representation held in computer memory. Records are retained for administrative, financial, historical or legal reasons. According to Manjo (2019), records comprises of general correspondence and administrative records; financial transactions (papers or electronic); working papers drafts and edited versions; databases and tables; personnel and employment documents; student and class-lecture documents; web-sites; electronic media tapes, disk, hard drives and portable storage devices; and electronic messages including email, voice mail and whatsapp messages

Secondly, protection of records connotes securing official records from harm, danger, theft or destruction by fire, water, termites or thieves. At a glance, protection principles required that official records requiring protection to be lawful; purposeful; confidential; possesses integrity; and involves accountability and storage. Protection of official records can also be referred to the process of securing documents, records and files against damage or destruction. Some common synonyms of protection are defend, guard, safeguard and shielding of an object such as official records from damages, destruction or danger. It is noteworthy to state that security threats to records may come from all direction ranging from breaches to theft, fire, flood, vandalism, pirating, unauthorized access etc which calls for appropriate protection measures for both paper and electronic information's belonging to the organization.

Thirdly, record management is a way of looking at how records are created, used, maintained, protected and ultimately disposed of. The objective in managing official records is to make the record serve the purpose for which they are created, as cheaply and effectively as possible, and to make a proper disposition of them after they have served those purposes (Manjo, 2021). In this regard, record management captures both the need for confidentiality; protection; and proper record keeping for effective operations of the organization. Also, World Bank (2009) viewed record management as the systematic control of all records through their life cycle. This is in consonance with the definition of Dearstyne (1985) that record management is about overseeing



the creation and use of forms, correspondence and other records, filing and indexing systems, and other means of ensuring easy, rapid access to the information records; adopting and using modern technology in information creation, storage and manipulation; particular micro-film and automated data processing system; microfilming of selected papers records for security, ease of access , disposition of the bulk paper records after microfilming; and long term preservation of important and confidential information; and systematic disposing of records

### **Literature Review**

The article reviewed the writings of scholars on protection and management of records. The best ways to better protect records in any organization are; control access to registries where official records are stored; use of confidential waste bins and shredders; use of lockable document storage cabinets; secured delivery of confidential documents with padlock or keys; and periodic training of staff on how to handle official records( Manjo,2020). Protection of records have several advantages such as; avoidance of unnecessary leakages of records to the detriment of the organization, and enables people to feel safe in sharing their concerns and make request or seek for help from the organization. However, protection of official record is not absolute as sharing or releasing relevant information, upon approval, to the right people at the right time is vital to good safeguarding of such records. To protect of official records, organization must have a data or record protection policy, which may even be incorporated in the organizational handbook or scheme of service; describing both the type of information or official records considered sensitive; and the procedure staff must follow for protecting sensitive and classified information or records. The works of Manjo (2021) revealed that organizations may protect its records through the following ten measures;

- i. Keeping all confidential documents in locked fire proof file cabinet or rooms accessible only to those who have a business or need to know.
- ii. Protecting all electronics information from hacking, destruction, or thefts via fire walls, encryptions and password.
- iii. Given instructions to all staff to clear their desks of any confidential information files before going home at the end of the day.



- iv. Staff must refrain from leaving confidential information visible on their table or computer monitor when they leave their offices.
- v. Marking all confidential information or records, whether written or electronic one, “confidential or restricted”.
- vi. All confidential information or records should be disposing of properly by shredding.
- vii. Staff must refrain from discussing official information in public places.
- viii. Staff must refrain and avoid using e-mail to transmit certain sensitive information.
- ix. Staff must be reminded that there is limit to the acquisition of data especially when relating to social security numbers, NIN, driver’s license number, and BVN unless it is integral to the official transaction, hence, staff should restrict access to information on a “need to know basis”.
- x. Before disposing of an old computer, staffs should use software programme to wipe out the data contained in the computer or have the hard drive destroyed.

In practical terms, protection of official records requires securing them from physical damage, external breaches or invasion, and internal theft or fraud. However, organization usually faced range of security threats to its records that may come from different angles including theft by staff and misuse of information at disposal, fire, (burning-accidental or deliberate), flood and other environmental natural disasters; and of recent, electronic data breaches such as hacking, pirating, copying (without authority); inflicting viruses and other types of cybercrimes bedeviling the organizational records, which are usually/often carried out by staff without due authorization of the organization.

In Lemark’s training manual on records management (2016), records were classified into four major classes. The first category is vital records consist items like legal document of the organization, title deeds, major contracts tenders and agreements, property plans, minutes of management and board meetings, insurance policies and policy decisions of the organization. These records should never be destroyed as they are essential to an organization existence and often irreplaceable. Confidentiality and protection of vital documents must never be compromised by the head of organization as such records constitute the heart and life wire of the organization at any point in time. In most Institutions, the head of the organization usually keeps



vital records in their office's vaults or safe to ensure its confidentiality and protection from leaks, fraud, and theft or fire destruction. The second category is called the important records, which are referred to those records that facilitate administrative and executive operations and may only be replaceable at huge cost and much delay. Important record includes; invoices, received accounts, quotations, financial statements and other related procurement and accounts documents. The third class is called the Useful records, which are those records that are required for short term usage such as memorandum, briefs and bank statements. Lastly, the fourth category is called the non-essential records which comprises of routine enquires, announcements and acknowledgement, draft notes, telephone conversations and others. These records have a temporary value and may be destroyed after a short period.

The importance of all these records in any institution cannot be overemphasized. Records play significant role at any given stage in life of an institution and this made its protection a necessity in recruitment process, training and development of staff, transfer, project implementation, monitoring and evaluation, retirement, pension and operational activities of the organization. Records are therefore an essential informational resource. Apart from record management, its protection in a like manner, like other government resources is very vital for the substance of organization. Records should be protected as fully important, as other administrative functions since records are the centre of organizational operations.

In practice, accountability can only be achieved by protecting the records used for operations by the organization and their protection means they would be available when required by the authority and the public alike. Any organization that fails to protect records may not be able to deliver on its core mandate effectively and efficiently, hence record management and protection should be given an equal status as other auxiliary functions because there is no organization that can also operate effectively and successfully without records. In fact, Shepherd (2006) averred that organizations uses records to support accountability, when they need to prove that they have met their obligations and complied with the best practice. Record therefore support more effective and efficient operation, facilitate e-operation and service delivery; help demonstrate accountability and constitutes a source of information for both the organization and the public; hence, protection of records is a matter of necessity not an option. Similarly, in the words of



Dearstyne (1985), record with an enduring value requires preservation and protection because they provide a framework for the understanding of the past. In a nutshell, the concept “record”, can be viewed as the information captured for re-use at a later stage and as evident of an activity or action undertaken; and a basis on which future decisions are made. Records are important and need to be protected, as it is difficult to imagine the life of an organization without them, particularly in the operations and running of an organization. The importance of an official records shows that public institution would come to a standstill without official records which are, in effect, constitutes institutional memory for operational efficiency and effectiveness. All public institutions and its officials, depends on official records from Registries and files, for the information needed for the day to day operation and performance of their works and duties, for the achievement of the goals and objective for which the institution was created.

In order to ensure adequate protection and management of official records, organizations usually creates a Registry for record keeping. In fact, a major tool of the public service in the public policy making process is the Registry. According to Afolayan (2012), a Registry is a room or office in every ministry, department or organization where all files belonging to the ministry or department are kept. It is also an office where clerical functions are performed and other administrative functions of registry includes; receiving incoming mails in respect of an issue or problem; filing, classifying and numbering of papers including council, memorandum, council conclusions and extracts; dispatching of mails including council documents in respect of public policy; and sorting papers or document for permanent retention and record purposes.

In Nigerian public service, registries are principally of two types; open registry and secret registry. They are places which keep custody of officer’s files and subject files. However, in the office of the Secretary to the Government, there is a cabinet registry which handles and stores all records pertaining to executive council’s memoranda, conclusions and extracts and directives in respect of public policies (Manjo, 2019). A registry is regarded as the mainstay of a ministry because it is the custodian of all files, correspondences and other documents relating to a particular public policy. The Registries are the nerve centre of ministries and they are responsible for the storage, dissemination and speedy retrieval of relevant information for decision making,





during formulation and implementation of public policies. Indeed, the first generation of executive officers and clerical officers in Nigerian civil service performed registries functions effectively and efficiently, and their activities facilitated policy making and execution in the 60s and 70s in the country. Presently, it is rather unfortunate that only few clerical officers in the Nigerian civil service today are conversant with the functions and operations of registries. This has therefore accounted for lack of adequate information and records about previous government policies, and its attendant lack of continuity in public policy and government programmes (Manjo, 2019).

### **Theoretical framework**

The theoretical framework underpinning this work is record continuum theory, as it is suitable for explaining and analyzing issues relating to official records and record management in this era of freedom of information law. The theory was developed by Scholars of national archival institutions, archives schools, international professional records and archives management organisations to justify the protection of official records. Though, Shepard and Yeo (2003) argued that both the record life-cycle and records continuum theories emphasize proper management of paper and electronic records, however, Yusuf and Chell (2000) averred that the records life cycle theory is not useful in managing electronic records and on this premise, this study adopted the records continuum theory which addresses the management of paper and electronic records for analyzing the necessity for the protection of official records in public institutions in this era of freedom of information law.

Also, An (2001), posited that the evolution of the records continuum theory shows the processes of records management moving towards integration of the management of documents, records and archives. Therefore, the theory is more applicable in records and archives management studies and serves as theoretical foundation of analysis dealing with protection of official records-paper, electronic records and archives. The records continuum theory consolidated the eight stages of the record life-cycle concept into four stages, namely: creation, classification, scheduling and maintenance, and use of information (Atherton, 1985). Under the record continuum theory, record managers is involved in all the stages of managing records; thus



ensuring the creation of right records, containing the right information, organizing the records to facilitate their use, systematically disposal of records that were no longer required, and protecting and preserving records for institutional memory.

## **Methodology**

The study utilized qualitative method through content analysis of relevant publications and literature on issues and challenges to protection and management of official records in this era of freedom of information law. The content analysis covers discussion of the relationship between protection of official records and record management in this era of freedom of information law in Nigeria.

## **Analysis and Discussion of the Challenges Inherent in FOI Act in Relation to Protection and Management of Official Records**

In this era of freedom of information law, its section 1 gives the right to any person to access or request information, which is in the custody or possession of any public official, agency or institution. However, section 2 (1) of the Act provides that “Public institution shall ensure that it record and keep information about all its activities, operations and businesses, “and continuing, in section 2 (2), the Act states that “public institution shall ensure the proper organization and maintenance of all information in its custody in a manner that facilitates public access to such information”. Notwithstanding sections 1 and 2, the Act provides in section 4 (b) that “Where the public institution considers that the application should be denied, the institution should give written notice to the applicant that access to all or part of the information will not be granted, stating reasons for the denial, and the section of this Act under which the denial is made”. By the provision of section 4, the Act had in a way offer protection for official records that are sensitive in nature for security and other reasons.

More importantly, section 9 (1 & 2) of the Act further enjoins public institution to maintain effective record management by stating inter-alia: Every government or public institution shall ensure the proper organization and maintenance of all information or records in its custody, in a manner that facilitates public access to such information or record under this Act. Apart from this provision in the Act which promotes effective record management, section 10 of the Act also



relates to protection of official record by stating inter-alia that “It is criminal offence punishable on conviction by the Court with a minimum of 1 year imprisonment for the officer or Head of any government or public institution to which this Act applies, to who willfully destroy any records kept in their custody or attempt to doctor or otherwise after same before they are released to any person, entity or community applying for it”. This section wholesomely offers protection for official records against destruction, forgery and other fraudulent acts.

More significantly, the Act in its interpretation section endeavour to give a legal definition of official record that must be protected and specifically in section 30 defined public record or document as “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 any;

- i. Information recorded or stored or other devices; any material subsequently derived from information so recorded or stored;
- ii. Label marking or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means;
- iii. Book, card, form, map, plan, graph or drawing;
- iv Photograph, film, negative, micro-film, tape, or other device in which one or more visual images are embedded so as to capable (with or without the aid of some other equipment) of being reproduced.

Based on the study’s interrogation, a critical look at section 3 of the Act reveals some implementation challenges inherent in the Act. This is so because there is hardly any law without derogation and limitations. In the study’s views, it will be unethical to let loose official records and would also be prejudicial to public safety and security to release official records and information to perceived enemies, or release information on matter pending in court or those regarding the operational strategies of the institution in spite section 1 and 2 of the Act. In the interest of public safety and security, the Act itself provides some exemptions in its sections 11, 12, 14, 15, 16, 17, 19 and 26 inferentially protected records and facilitates record management.



By way of summary, section 11 allow public institution to deny any application for any information, the disclosure of which may be injurious to the conduct of international affairs and the defence of the Federal Republic of Nigeria. Going forward, section 12, allows public institution not to make open any records compiled for administrative enforcement purposes or for internal matter of the public institutions; if such disclosure would interfere with pending or actual law enforcement or deprive a person of a fair trial or would unavoidably disclose the identity of a confidential source, or constitute an invasion of personal privacy or obstruct an ongoing criminal investigation; or which could be reasonably injurious to the security of penal institutions. Equally, section 12 (3) forbids disclosure of an information that could be reasonably be expected to facilitate the commission of an offence.

In addition to the foregoing exemptions, section 14 of the Act also recognizes privacy of each staff in the institution by providing that; “public institution may deny an application for information that contains personnel information such as;

- a. files and personnel information maintained with respect to clients, patients, residents, students or other individuals; receiving social, medical, educational, vocation, financial, supervision or custodian care or services directly or indirectly from public institution;
- b. personnel files and personnel information maintained with respect to employees appointees or elected officials of any public institution or applicants for such position;
- c. files and personnel information maintained with respects to applicants, registrants or license by any government or public institution cooperating with or engaged in professional or occupational, registration, licensure or discipline;
- d. information required of any tax payer in connection with the assessment or collection of any tax unless disclosure is otherwise requested by the statute; and
- e. information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies on the commission of any crime.

The Act also allows confidentiality of official records and data privacy by providing in its section 15 (1) that: a public institution shall deny application for information contains:



- a. Trade secrets and commercial or financial information obtained from a person or business whose such trade secrets or information are proprietary or confidential or whose disclosure of such trade secrets or information may cause harm to the interests of the third party.
- b. Information the disclosure of which could reasonably be expected to interfere with the contractual or other negotiations of a third party; and
- c. Proposals and bids for any contract, grants, or agreement including information which if that part contains the result or products of environment testing carried out by or on behalf of a public institution.

Confidentiality of official records and data privacy is further legalized by the Act in its section 16 which allows a public institution to deny an application for information that is subject to the following privileges:

- a. Legal practitioner-client privilege;
- b. Health workers – client privilege;
- c. Journalism confidently privileges;and
- d. any other professional privileges confidently by an Act”

In this work, the interpretation of items(d) means the Act is in furtherance of the provisions of Official Secret Act (1962),Criminal Code and Public Service Rules relating to confidentiality of officials records. It is noteworthy to stress that section 17 of the Act specifically cater for the confidentiality of the records of public institutions. The section read thus; “A public institution may deny application for information which contains course or research materials prepared by faculty members. By implication, it means the confidentiality of the research outcomes or results carried out by any public institution is guaranteed by the provision of section 17 of the Act. On a significant note also, and going by the provision of section 19 subsection 1 (a-c) of the Act the study is submitting that section 19 (1) guaranteed the confidentiality and protection of examination questions, test questions, scoring marks and examination data of educational institutions such as JAMB, Universities, Polytechnics and so on. For the avoidance of any doubt, Section 19 (1) read thus:” A public institution may deny an application for information 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 Engineer's plans for building not constructed in whole or in part with public funds and for buildings constructed with public funds, to the extent that the disclosure would compromise security; and
- c. Library circulation and other records identifying library users with specific materials.

On exemptions in the Act, section 26 categorically states that "This Act 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 for exhibition purposes or Materials placed in the National Library, National Museum or non-public section of the National Achieves"

Apart from the freedom of information Act (2011), there are several other legislations previously enacted to ensure protection and management of official records in public institutions. These subsisting laws includes the Official Secret Act (1962); 1999 CFRN (as amended); Public Service Rule; Criminal Code Act; and Data Protection Act (2023). Regarding the Official Secret Act, it was assented by Governor-General Nnamdi Azikiwe on 27<sup>th</sup> day of December, 1962 to prevent the publication or disclosure to the public of any material which the government views or sees as confidential. Section one of the Act allow for protection of official information and records in public institution in Nigeria while its section 7 relates to penalties and legal proceedings against the person who commit an offence under the sections 1, 2, or 3 of the Act; liable on conviction on indictment to imprisonment for a term not exceeding fourteen years. Also, Section 9 (1) Act defined "classified matter" to means any information or thing which under any system of security classification, from time to time, in use by or by any branch of 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. The Act provided for confidentiality and security of classified information. In fact, the Act prohibits transaction of classified information. The marking of documents and correspondence in public service as "confidential, restricted, top secret, secret etc" is to ensure proper implementation of the imports of Official Secrets Act in the



public service of the Federation of Nigeria. The Official Secret Act make it an offence for any public servants to give out official information or to release official records without due authorization. The public servants were required not to divulge confidential, classified and government information to third parties. Since the Act has not been repealed, it remained in force in the Public Service to demonstrate the premium government places on official records.

Furthermore, the 1999 Constitution(amended) in its Sections 22 and 39 of 1999 Constitution (as amended) uphold freedom of press, however, section 39 (3) of the same constitution expressly prohibits and prevents the disclosure of certain information in deference to any law reasonably justifiable in a democratic society. The section also imposes restrictions upon person holding office under the government of the federation or of a state, concerning disclosure of certain privileged information. Therefore, limits can be put on your freedom to access official records and your opinion or information, if the information was confidential and received in confidence; or it affects the authority such as public institution and independence of the courts; or used to regulate telephone, radio, television or cinemas. Equally, the Constitution imposed limits on the freedom of expression of people who hold government positions, or anyone who is a member of any of the security forces of the Federal Republic of Nigeria. Based on the foregoing section 39 (3) of the 1999 constitution (as amended) under reference, it means protection of the official records is guaranteed by the Constitution. It should be noted that the journalists or civil right activists, on the strength of this constitutional provision, cannot also hide under section I of the FOI Act which guarantee right to freedom to seek for and have access to information, to demand release of such sensitive materials in the public interest.

The FOI Act must be interpreted subject to the provisions of the Constitution particularly section 39 (3) thereof. The Constitution is the ground norm; supreme law of the land; and bind on all persons and laws in the country as stipulated in section 1 (3); and as affirmed by Supreme Court in the case of INEC vs Musa (2003). Besides, it is a legal concept that, no fundamental rights, (including freedom of the press and mass media), is absolute. Therefore, fundamental rights are subject to such restrictions in the interest of defence, public safety, public health and public order. Based on this, FOI Act is subject to the supremacy of the constitution and is generally subject to the restrictions imposed by section 39 (3) of the 1999 Constitution (as amended).



Equally, the Public Service Rules (PSR) also contains plethora of rules mandating public servants to protect official records. The PSR provided for classified documents and it is the practice in public institution to see office marked files and correspondence secret or confidential to protect official records. To be specific, Rule 010003 of PSR defined classified correspondence as correspondence which has been graded “restricted, confidential, staff confidential, secret or top secret”. The impact of Rule 01003 is to ensure confidentiality and protection of official records in public institution. Equally, oath of secrecy is part of the public service tradition for civil servants and public servants to take an oath of secrecy to ensure protection of official records. The access to confidential records that staff has or received, through the course of their working operation, may have a significant impact on the public institution’s ability to manage its affairs or to maintain a stand of impartiality and integrity with its client and the public. To protect the interest of the public institution, its clients and the public, confidential information and official records that staff have access to or receive through their employment must not be divulged to anyone other than persons who are authorized to see or receive the information or records both during their employment and after they retired from service.

Also, staff must not use confidential information or records or their privilege to access such records, for the purpose of furthering any private gains. Public Service Rules (2009) abhors leakages of official records, falsifications of records, suppression of records, withholding of files, false claims, engaging in partisan political activities, unauthorized disclosure of official information, violation of oath of secrecy and divided loyalty. In order to ensure protection of official records, PSR 04414 provided for the administration of Oath of Secrecy by Permanent Secretary or Head of public institutions by all officers to ensure that officers who have access to classify or restricted papers preserved them appropriately. The Oath of Secrecy is incorporated in the revised form no: GEN 75. Going forward, PSR 04415 prohibits unauthorized disclosure of official information and stipulates that “every officer is subject to the Official Secret Act (Cap 335). Similarly, every officer shall exercise due care and diligence to prevent knowledge of any such article, note, document or information being communicated to any person against the interest of the government.





In the same manner, PSR 04416 prohibits every officer from abstraction or copying official minutes, records or other documents except with permission of Permanent Secretary/Head of the institution. Based on PSR 04417, officers shall not have access to official or secret records relating personally to themselves. PSR 04418 also prohibits officers leaving the service, to take with him any public records without the permission of the Permanent Secretary to the Office of Establishment and Management Services in the Office of Head of Service. Equally, removal of historical document by any officer's prohibited by PSR 04419. Most significantly is the provision of PSR 04420 which prohibit every office from issue any publication or make public utterances on any official matters except with the permission of Permanent Secretary or Head of public institution.

It is noteworthy to state that Section 97 of the Nigeria Criminal Code also prohibit "any person who, being employed in the public service, to publish or communicate any fact which comes to his knowledge by virtue of his office and it is his duty to keep secret, or any document which comes to his possession by virtue of his office. The section also forbids abstraction or copying of any public document without authority and provides for imprisonment of one year term.

In the final analysis, since data protection is a constitutional right based on section 37 of 1999 constitution, the National Information Technology Development Agency (NITDA) in 2019 issued data protection regulation in Nigeria to further amplify the right of data controller and data processors, and transfer of data to a foreign territory. Also, the Nigeria Data Protecting Bureau published criteria for protection compliance by organization. These laws and regulations are applicable to anyone or organisation or entity that creates, stores, used or share the data of individuals or consumers. It also applies to the collection, storage, processing and use of personal data relating to persons residing in Nigeria and person of Nigerian nationality. There is also the Data Protection Act, assented on 12<sup>th</sup> June, 2023 by President Bola Tinubu. The Act provides a legal framework for protecting personal information and the practice of data protection in Nigeria. The Act established the Nigeria Data Protection Commission and replaces the National Data Protection Bureau established by President Buhari in February, 2022. The Commission is to advise government on data protection issues, promote awareness among controllers and processors of data of their obligations, provide information to individuals about their data protection rights, and



maintain a list of processing operation requiring data protection impact assessment. However, section 35 (1) of Data Protection Act (2023) provide exemptions that the privacy of personal data be exempt from the provisions of the Act for the purposes of public order, public safety, public morality, national security, public interest, the prevention or detection of crime, prosecution of an offender, assessment or collection of tax or publication of a literacy material. Other laws and regulations for data protection in Nigeria are Child Right Act (2003), the Cybercrimes (prohibition prevention, etc) Act( 2015), National Health Act(2014), National Identity Management Commission Act(2007),and the HIV and AIDS (Anti-Discrimination ) Act (2014). Also, the Central Bank of Nigeria and National Communication Commission regulate data protection in Banking and communication sectors of the economy.

### **Highlights of key Findings on Challenges to Protection and Management of Official Records in Nigeria**

Based on the foregoing analysis and the Researcher's practical experience in public service spanning over three decades, the study found following incidences the inherent challenges to protection and management of official records in Nigeria:

#### ***A. Challenges to protection of official Records in public institutions are;***

The challenges facing protection of official records across public institutions in Nigeria include;

- i. leakages of official memoranda and minutes in the files;
- ii. theft of files and mails;
- iii. burning of files and mails;
- iv. natural disasters such as flood or erosion that may washing away mails and files;
- v. vandalisation of files and mails;
- vi. hacking and cybercrime by fraudster on electronic mails; ;
- vii. copying the content in the file without authority or permission;
- viii. virus inflicting electronic mails;
- ix. conflicting laws on protection of records.



***B. Challenges to Record Management in public institutions are;***

The challenges facing record management in Nigeria include;

- i. poor tracking of the production of records, files and mails;
- ii. poor record retrievals;
- iii. inadequate training for staff handling records;
- iv. problem of maintaining compliance with multiple laws and regulations;
- v. problem of integrity and accuracy of data and records;
- vi. challenges of data capturing, digital record management and strategy;
- vii. challenges of data recording and record storage;
- viii. problem of managing digital assets and records across multiple locations;
- ix. issue of tracking the production of records;
- x. problem of disorganization of records by incompetent staff and fraudsters;
- xi. missing records and improper retention schedule in registries;
- xii. poor record keeping, difficult inventory tracing and tracking of files and mails;
- xiii. inaccurate statistics on file and mails;
- xiv. inefficient records disposition; and
- xv. inadequate system for managing electronic records

**Conclusion**

It is the conclusion of this study that protection and management of official records is not a matter of choice, but compulsory in this era of Freedom of Information Act. Protection and management of official records must therefore be given priority and must be considered important in all public institution to ensure safety of the records belonging to organizations.

**Recommendations**

In order to ensure adequate protection and management of official records across public institutions in Nigeria, the study is making two categories of recommendations as follows;



### ***I. Category A: Recommendations for Protection of official records are;***

- i. ***Locked Storage Area:*** Use of lock in record storage rooms like fireproof file cabinet and safe for storing official memoranda, letters, minutes and files to keep these document away from theft and from the eyes of strangers or visitors.
- ii. ***Fire and Flood Protection:*** Use of fire proof and water resistance cabinets and safe to minimize the risk to ordinary filing cabinet in event of flood or fire incident.
- iii. ***Off-Site Storage Facilities:*** To serve as back up, especially extra copies or photocopies of data, which can be recall in time of need. Special security may also be provided to guard off-site record storage facility to forestall theft.
- iv. ***Security for Electronic Records:*** Document management system (DMS), software and cloud storage should be provided, and the organization should embrace the use of tools and methods like access control and encryption to protect files. Official documents can also be protected through redaction during scanning process to obscure sensitive parts of the new digital documents. The access control lists (ACL) can also be used to limit access to sensitive official files or documents for only who need them. Predefined lists with authorized users can be configured while any other prying eyes are locked out. Also, electronic document management systems in used by the organization should incorporate encryption tools to forestall interception of document in an open network. With encryption, a document intercepted over an open network, will be inaccessible without the decryption key.
- vi. ***Duplication and dispersal:*** Since paper copies are both fragile and may be easily misplaced by staff, hence organization may protect its records through: fortifying the Registry with appropriate locks and security fixtures; installation of fire and security alarms in the Registry; limiting access to classified records; labelling all records, files and cabinets appropriately; conduct of regular checks, inspection, and auditing into Registry; creating a movement book for all mails, file and documents; destruction of unwanted records periodically, in the presence of Supervisor to forestall congestion in Registry; keeping records on shelves or in cabinets instead of floor; use of basement or ground floor areas for Registry or for storage of file; use of fire resistant vaults,



cabinets or safe for physical records that were located on-site; electronic records must be regularly backed up to off-site location of a minimum 10km from wherever the primary copy is stored and use of cloud-based storage as backed up by the service provider; and periodic fumigation of Registry for protection from rodents, pest, and termites to forestall damage of official records.

## ***2. Category B: Recommendations for Effective Record Management are;***

- i. Strict adherence to laws and rules regulating information and record management as contained in the 1999 Constitution (as amended), Public Service Rules, Official Secret Act, Criminal Code and Freedom of Information Act.
- ii. Effective communication between the Head and the staff of the organisation will ensure confidentiality and protection of official records.
- iv. Head of institution should designate a Director with the responsibility for supervision of record management in the organisation. The Director of Records should develop and implement record management policies which should be approved by the Head of the Institution. Adherence to record management policy should be continuously monitored and reviewed periodically, to ensure confidentiality and protection of the Institution's official records.
- iv. Record control mechanisms should be adopted between the Head, Director (Record) and Record Office, such that register of file, mails, memos etc are opened in triplicate, with one in Record Office, one with the Director (Records) and one with the Head of the Institution. Such register should contains a description and opening dates of all files that were actually opened according to the subject provisions in the filling system; register of all disposal, which contains copies of all disposal documents, to be contained in the destruction register. The Director (Records) should determine retention periods for all records especially non-important records.
- vi. Training and retraining of Record Officers to constantly equip them with necessary skills on record management to enable them perform their functions optimally.



vii. Public institutions should endeavor to equip Record Unit with modern record management tools and techniques to ensure confidentiality and protection of its official records. Periodic in-house training of staff on record management will be of help to ensure all staff of the organisation is conversant with Registry's procedures, documentation, filing system, allocation of numbers, checking and movement of mails and files and other record management techniques to ensure protection of official records

viii. Staff violating confidentiality policy or caught leaking official records of the organization must be sanctioned, and discipline, to serve as deterrence to others and to ensure confidentiality of the organization's records. More importantly, staff violating confidentiality policy or caught leaking official records of the organization must be sanctioned, and discipline, to serve as deterrence to others and to ensure confidentiality of the organization's records.

ix. Vital records should be duplicated digitally, through scanning on the network drive or cloud storage and staff must always keep desks and record storage area as clean and free of records when not in use; and proper recording of in-coming and outgoing mails and files on hourly and daily basis.

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