

## **Media and Law: An Assessment of the Effectiveness of the Freedom of Information Act by Journalists in Nigeria using Auchi, Edo State as a Case Study**

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### **Abstract**

This study interrogates journalists' assessment of the effectiveness of the Freedom of Information Act (FOIA) in Nigeria, particularly as it pertains to its implementation and successes in retrieving useful information from public institutions in Nigeria. Using the mixed research method, the article involves nine purposively selected journalists in Auchi, Edo State, Nigeria. Anchored on the social responsibility theory, the study discovers that journalists are aware of the FOIA, but it is not well implemented because of a lack of cooperation and the absence of proper documentation by the relevant government agencies. It also finds that the civil service is the most cooperative and the police least cooperative agencies of government. It, therefore, recommends that the FOIA should be reviewed to give journalists more legal power to be able to access more easily information for public good.

**Keywords:** Media, Law, FOIA, Journalists, Auchi, Corruption, Nigeria, Social responsibility theory

### **Introduction**

Information is power (Obi & Mmejim, 2019). It is the obligation of the government to ensure the protection of privacy and data security (Aidonojie & Egielewa, 2020; Allen, 2013). However, the right to access public records and information within the domain of public institutions is an essential ingredient of a democratic society (Ayuba et al., 2011). Where the right to access information and the public record is not adequately guaranteed, there is a tendency for human rights abuses and perpetuation of corruption (Abasi & Al-Sharqi, 2015). It is concerning the relevance and potency of information (Makinde et al., 2016) that informed the United Nations and African Union, to via Article 13 (b) of the United Nations Convention against corruption adopted by resolution 58/4 of the General Assembly of the United Nations in October 2003; Article 19 of the African Convention in preventing and combating corruption adopted by the 2nd ordinary session of the African Union assembly in July, 2003, Freedom of Information Act, 2011, mandated its member state to allow free flow of information within their territory in combating corruption.

The right to access public records and information in Nigeria is not novel (Jaeger et al., 2015). This is because, after severe agitation from the citizens of Nigeria, the federal government had no choice but to pass the Freedom of Information Bill into law in 2011. The agitation stemmed from the fact that there were difficulties in accessing virtually all documents within the public domain. They were all classified and public institutions were scared of releasing any information as there was no law mandating or empowering them to issue any information to an applicant (Omoera, 2008; 2011; Ali, 2014). Irrespective of the existence of the Freedom of Information Act (FOIA) in Nigeria, citizens still encounter many challenges in assessing public records and information (Anyanwu et al., 2013). It is important to note that regardless of the passing of FOIA, many government agencies still ignore journalists when they request public records. It is often the case that there is no proper documentation of information and documented documents when released are often clumsy. These to a great extent hamper journalists in feeding the general public the appropriate information needed and thereby breeding fake news. This study considers the conceptual and legal frameworks of the

FOIA with regard to the right of access of information in Nigeria. It uses qualitative cum quantitative methodology to investigate the impact of the FOIA on journalism practice in Auchi, Edo State, Nigeria. In doing this, the study probes the right to access information within public institution, the duty of keeping adequate records of information by public institutions, and some of the limitations within the FOIA.

### **Statement of the Problem**

This study is aimed at closing the research gaps in previous studies. Studies have focused on the quest for more effective media, the operationalization of FOIA in Nigeria, Nigerian journalists in general and the south-eastern region of Nigeria (Omoera, 2008; 2011; Dunu & Ugbo, 2014; Ali, 2014; Adeniji, 2017; Agba, Oгри, & Adomi, 2018), with no known research focus on journalists in Auchi, in Edo State specifically. This article will, therefore, focus on how journalists in Auchi, Edo State assess the effectiveness of the FOIA.

### **Research Questions**

Three research questions have been formulated for this study.

- i. Do journalists believe that the FOIA has made their job of retrieving information from public institutions easier?
- ii. Which agencies or public institutions are more cooperative in the implementation of the FOIA?
- iii. What are the shortcomings of the FOIA?

### **Methodology**

The mixed research method (MRM) is employed in this study. A mixed research method is a procedure for collecting, analyzing and mixing both quantitative and qualitative methods in a single study to understand a research problem (Abraham, 2018). The quantitative method is a method in which the researcher collects quantifiable data from participants and analyses the numbers using statistics and is normally conducted in an unbiased and objective manner. A qualitative method, on the other hand, is a research method in which the researcher relies on the views of participants. Such participants are asked broad questions and the data collected consists largely of words (or text) from participants.

Such a method describes and analyses the words for themes and is normally conducted in a subjective, manner. The convergent parallel design (CPD) is the form of the mixed method in which quantitative and qualitative data are collected concurrently and are analysed separately but the results are merged during interpretation and analysis. The method is most apt for this study because some of the data require simple frequency and others, in-depth descriptions by the respondents.



Figure 1: Mixed research method steps. Source: Abraham Fischler (2020).

### Literature Review

The freedom of information act (FOIA) is a law that gives access to citizens to certain information that is relevant for the good of the society but of greater importance to journalists and media professionals because it is essentially their main business to gather information and disseminate same (Allen et al., 2019; Aidonojie & Egielewa, 2020). However, during the military dictatorship access to information was particularly difficult. Even under civil rule, between 1999 and 2003, police raided editorial offices and arrested employees of press organizations, including the *Daily Independent*, *The News*, and *The Observer* during the 1999-2003 democratic dispensation because of publications that were critical

of the government. The intention was to curtail the press power to question government actions. Scholars opine that journalists have not been able to fully utilize the FOIA due to many challenges which include legal, political and judicial (Dunu & Ugbo, 2014; Nnanwuba, Ogochukwu, Nwakego, & Chukwuweike, 2019). However, several other studies have examined the FOIA vis-à-vis the journalists and how the law improves their work. Allen et al. (2019) researched on how journalists, individuals and corporate organisations in Nigeria use the FOIA and found that more non-media individuals and organisation make use of the FOIA than media-related individuals and organisations and concluded that Nigerian journalists were not harnessing the advantages of the FOIA because of legal, political and judicial factors as well as the poor culture of investigative journalism in Nigeria.

Similarly, Dunu and Ugbo (2014) researched how journalist implemented the FOIA in the discharge of their official duties. One hundred and thirty-six (136) journalists of south eastern states of Nigeria were surveyed and the findings showed that the FOIA has not adequately assisted journalists' access to information. While many of the respondents were aware of the FOIA, many have never put it into use in the performance of their duties. Therefore, they have not benefited from the law (Dunu & Ugbo, 2014). Adeniji (2017) in a research using focus group discussion (FGD) and telephone interview to solicit responses from journalists, media scholars and media entrepreneurs in Nigeria found that the level of awareness among the general public on the usage and effectiveness of the FOI Act was low.

### **Theoretical Framework: Social Responsibility Theory**

The social responsibility theory was enunciated in an era when the libertarian theory of the press held sway at the turn of the 21st century during which the press was bestowed with enormous powers to publish without fear of being harassed (Aidonojie & Egielewa, 2020). With time, the press abused this privilege and became 'irresponsible.' There was thus a cry for reform of the press. Consequently, in the 1940s, the founder of *Time* magazine, Henry Luce founded a commission (Hutchins Commission) to carry out this reform led by the then-president of the University of Chicago, Robert Hutchins. After four years of deliberation the commission

came up with a report entitled "A Free and Responsible Press" which listed five guidelines for a socially responsible press (Uzuegbunam, 2013). They include:

- i. Provide a truthful, comprehensive and intelligent account of the day's event in a context which gives them meaning.
- ii. Serve as a forum for the exchange of comment and criticism.
- iii. Project a representative picture of the constituent groups in society.
- iv. Be responsible for the presentation and clarification of the goals and values of the society.
- v. Provide full access to the day's intelligence.

An expanded version was given by Dennis McQuail (McQuail 1994 cited in Racidon, 2019) in which he advocates a press that is committed to the common good and answerable to the people, thus:.

- i. The media have obligations to society, and media ownership is the public trust.
- ii. News media should be truthful, accurate, fair, objective and relevant.
- iii. The media should provide a forum for ideas.
- iv. The media should be free but self-regulated.
- v. Media should follow agreed codes of ethics and professional standards.
- vi. Under some circumstances, society may need to intervene in the public interest.

The essence of the Hutchins theory was that while retaining the rights to hold the government accountable, it also has a responsibility to preserve cherished societal values, including democratic principles. The theory also holds that the government has an equal responsibility to monitor the compliance of the press to this requirement. The FOIA is established to give journalists and members of the Nigerian public the needed information to enable the discharge of duties within the ambit of the law.

### **Conceptual and Legal Framework of FOIA: Right to Access of Information in Nigeria**

The right to access information has been given international recognition by virtue of Article 13(b) of the United Nations Convention against Corruption and Article 19 of the African Convention in Preventing and Combating Corruption. These articles are very vital to sustainable societal development. Article 13 (b) of the United Nations Convention against Corruption made it an obligation on the part of the government of member states to involve their citizens in the participation of whittling down corruption via adequate access to information. Furthermore, Article 19 of the African Convention in Preventing and Combating Corruption stipulates that all member states should adopt legislative and other relevant measures to ensure that the right to access information is guaranteed, to fight corruption.

In Nigeria, the quest for the right to information began with the evolution of freedom of the press (Suntai & Targema, 2018). Freedom of expression and the right to access the data in Nigeria had always been curtailed (Oluchukwu & Kur, 2014). During the colonial government in Nigeria, the British government enacted several laws such as; the Newspaper Ordinance No.10 of 1903 and the Seditious Offences Ordinance No. 10 of 1909, to restrict the activities of the press in disseminating and receiving of information. However, in 1960 when Nigeria gained independence, the right to freedom of expression, which includes; the right to publicise, seek and receive information was recognised by the Nigerian Independence Constitution of 1960. During the military regimes, several decrees were promulgated to restrict this right. However, in the fourth republic, when power was returned to democratic government, the 1999 Constitution became operational. The right to information without interference is guaranteed, and recognised by section 39 of the Nigeria 1999 constitution (as amended in 2011) and the procedure for enforcing these fundamental rights was strengthened by Fundamental Rights Enforcement Procedure Rules, 2009 (Sanni, 2011). Although, these rights are also restricted with respect to peculiar circumstances such as: in time of emergency and national security. Section 39 further provides that, nothing in this provision shall nullify any law that is rationally justified in a democratic community.



The above section also strengthens the Official Secret Act of 1962. Given the above, it will be apt to conclude that the right to access information is not absolute. It is this regard that the press and the general public mounted pressure on the Nigeria Government during the Obasanjo's administration, that there was a need for a law to be enacted to guarantee the right to access information (Aminu et al., 2011). However, the power to make a law to regulate public record and information is saddled with the federal and state governments. Items 4, 5, and 6 of the concurrent legislative list of the constitution empower the federal and state governments to make laws pertaining to the above informed the federal government's enactment of the FOIA.

### **The Right to Access Information within Public Institution/ Domain**

The right to access information in Nigeria is very sacrosanct to research, exposing corruption, and for the education of the general public to be guided appropriately (Bamgbose & Etim, 2015). What constitutes information was interpreted by section 30(3) of the freedom of information act, 2011 to mean all accounts, documents and information stored in whatsoever shape including in print, electronic, visual image, sound, audio recording, etc. Furthermore, the FOIA also interpreted "public document or record", as a record that is stored in which ever structure having been arranged, or having been or being used, received, possessed or in the direct control of any public or private organization involving matters of public interest.

Section 1(1) of the Freedom of Information Act gives right to any person to access information within the public institution domain. Section 29(9) (b) of the Freedom of Information Act define an "information" as any term used in the Act to refer to an information to be access by an applicant or whichever information that is in custody with a government or public institution. The information need not be in printed form, and it can be in an electronic format. In this regard, an individual right to access information can only be made to a public institution. However, in applying for access to information, section 1 of the Act provides that it can be done in a written or any other form. However, section 4 of the Act states that, where an applicant makes an oral



application, an authorised public institution official shall reduce the application to writing. The public institution official shall give a copy of the written request to the applicant. Furthermore, the Act provides the privilege to illiterate or physically challenged persons to make an application via a third party.

Given the above, where an applicant makes an application to access information. Section 4 (a) of the Act, requires a public institution to produce or make available to the applicant the information so applied for within 7 days. However, where a public institution receives an application from an applicant to access information, and the public institution is of the view that another public institution has a higher interest, based on the following grounds as provided in section 5 (3) of the FOIA, which are; i. that the information was originally produced in or for the institution and ii. in the case of information not originally generated in or for the public organization, the organization was the primary public organization to take delivery of the information. By virtue of section 5 (1) and (2) of the FOI Act, public institution are required to within 3 days of making the application by the applicant, transfer the application to the other public institution, and application will be deemed to be proper so made by the applicant. This is Provided that the applicant is notified of the transfer of his application to the other public institution that has a greater interest in the information.

The FOIA further provides that, where a public institution denies an applicant the right to access information within their custody, a written notice should be given to the applicant within 7 days. It is not enough that a public institution should only give written notice concerning their refusal of an applicant application. Section 7 (1) of the Act which also has provision similarly with section 4(b) provides that, where the government or public organization denied an applicant access to a document or information applied for in the Act, or a fraction, the organization shall inform the applicant via the notice given, the reason for the rejection. The section also empowers the applicant to challenge the decision of the public organization, denying them access in a court of competent jurisdiction. Furthermore, denial of access to information by the public institution can also be by conduct. Section 7(4) of the FOI Act provides that this can take the form where a

public institution fails to give an applicant access to the information within the time limit, as specified by the Act. However, an aggrieved applicant right, who has been unjustly denied the right to access information, as spelled out by section 1(3) of the FOI Act. Section 2 and 20 of the Act empower an aggrieved applicant to institute a legal action to compel the public institution to comply with granting their request. However, Section 20 provides that the application to the court must be brought within 30 days of the refusal or denial of access to the information or such time as may fix or allow by the court. Furthermore, the court is required to hear the application summary, after which the court may give judgment

#### **Duty of Keeping Adequate Record of Information by Public Institutions**

It has been often said information is power and that the faintest pen is mightier than the sword. To have adequate documentation, storage and preservation of information within the public institutions in Nigeria, Section 2 of the Freedom of Information Act places the responsibility on a public institution to ensure that it keeps records of information of all their activities, operations and businesses. Section 9(1) of the Act further states that all government or public organization shall make sure that it keeps all information or document about the organisation's operations, employees, activities and other necessary pertinent or connected information or document.

Section 2(2) and 9(2) of the FOI Act also provides that the duty of a public institution is not only limited to proper arrangement and preservation of all information in its care but ensure that they are kept in a manner that persons can easily access to such. In this regard, section 2(4) of the Act provide that, information within public institution domain (not subjected to any of the provision of this Act or Official secret Act) must be made available via print, electronic or online sources and at the office of such public institution. However, this subsection that requires public institutions to document and publish public information within their domain had been the challenges with most public institution (Agba Ogri & Adomi, 2018). These are concerning the fact that they lack the capacity and infrastructure for storing and publishing

public information in electronic or online sources (Agba Ogri & Adomi, 2018). To ensure that public institutions do not pick and choose which public information a public institution should publish, section 2(3) of the Act requires and mandates public institutions to publish public information within their domain as specified in section 2 (4) of Act. Some of the information that may be relevant to this study is as follows;

- i. Description of the organisation and responsibilities of the organisation including facts of the programmes as well as functions of each division, branch and also a department of the organization
- ii. Classes of records control by the organization in sufficient detail to make smooth the progress of the exercise of the right to information as provided the Act
- iii. Manuals used by the workforce of the organisation in administering or executing any of the programmes or activities of the organisation
- iv. Substantive rules of the institution
- v. Statements and interpretations of the guiding principle which has been adopted by the organisation,
- vi. ultimate planning policies, recommendations, as well as decisions;
- vii. accurate reports, examining reports, and studies whether prepared by or for the organisation;
- viii. The right of the government, public organisations, or of whichever private person(s)
- ix. The title and address of the proper staff of the organisation to whom a request for information in this Act shall be sent

By section 2(5) of the Act, public institution is mandated to periodically update and review information published by the Act whenever there are changes of such information. The duty of public officers to ensure proper documentation, safekeeping and maintenance of public information within their domain are sacrosanct. As a matter of law section, 10 of the Act made it an offence and punishable upon conviction if any public officer willfully destroys or altered or doctor any records kept in his custody.

### **Challenges and Limitations of Access to Public Information because of the FOIA and Official Secret Act**

The essence of the Freedom of Information Act is to ensure that public records and information are freely available for public access. Section 1(1) of the Act provides for the right of any person to access information within the public domain. However, the same law that provides for the right to access public information had within it several sections such as section 11, 12, 14,15,16,17 and 19 of the Act, which pose challenges and limitations to the right to access information within the public domain. Given the above sections, a public institution is empowered to refuse or deny an applicant the right to access information exempted by the above-said section.

The power of a public institution to deny disclosure of information must be considered in line with the public interest. What this entails is that, where the public interest is deemed to be paramount in disclosing the information, a public institution is bereft of the power to deny applicant access to information, even if the Act exempts such information from disclosure. Section 12(2) of the Act, which had similar provision with sections 11(2), 14(3), 15(4) and 19(2) of the Act, provides thus; irrespective of whatever is provided for in this section, denial of information shall not be entertained if the public interest in accessing a piece of information will outweigh any injury that may occur. Beautiful as the above subsections may seem to stem the limitation and challenges in accessing information within the public domain, it still had not solved the problems created by the Act. These are because, in determining what constitutes the weights of public interest that may outweigh the right of privacy or power of non-disclosure of classified information, was not duly spelt out by the Act. The ability to determine what constitutes public interest is still left for the public institution to decide. An applicant who is aggrieved of his right to access to information is only left with the last resort of approaching the court. The court system in Nigeria can be frustrating. These are concerning the fact that the court system is beclouded with technicalities.

### **Sample Size and Population**

This study used a sample size of 12. The population includes journalists working in Auchu in Etsako West local government area of Edo State, Nigeria. There are a total of twelve (12) journalists

working in Auchi area. The total number of journalists working in the three media organisations in Auchi area is as follows:

NTA Uzairue	10
News Agency of Nigeria	1
ITV	1
<b>Total</b>	<b>12</b>

**Sampling Technique**

A questionnaire was designed by the researcher semi-structured questions to which respondents were requested to provide both answers to predetermined options and free opinions. Questionnaires were distributed to the fourteen (12) journalists in the three media organisations above but only nine (9) were retrieved for analysis.

**Data Presentation and Analysis**

The data generated for this study are herein presented in the research questions:

**Research Question 1**

Do journalists believe the FOIA has made their job of retrieving information from public institutions easier?

Are you aware of the Freedom of Information Act (FOIA)?

Table 1: Journalists' awareness of the FOIA

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	9	100,0	100,0	100,0

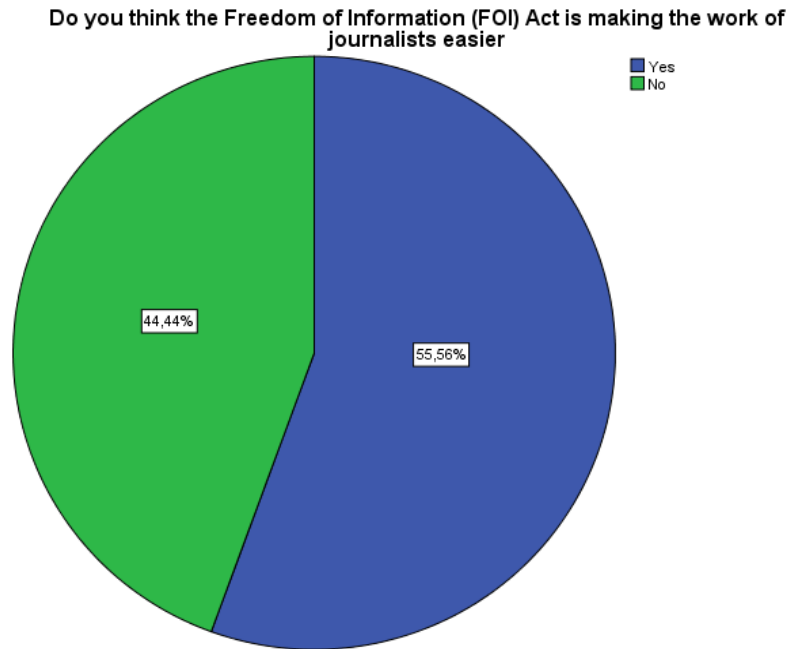


Figure 2: Journalists' assessment of the usefulness of the FOI Act to their work.

Table 1 above shows an absolute majority (100%) of all the respondents is aware of the freedom of information (FOIA). In figure 2, more than half of all the respondents (56%) agree that the FOIA is useful in the course of carrying out their duties as journalists.

### **Research Question 2**

Which agencies or public institutions are more cooperative in the implementation of the FOIA?

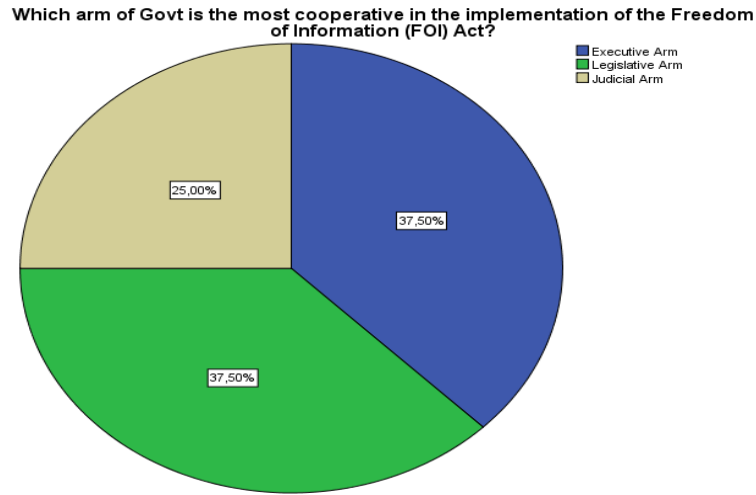


Figure 3: Most cooperative arm of government in the implementation of the FOIA.

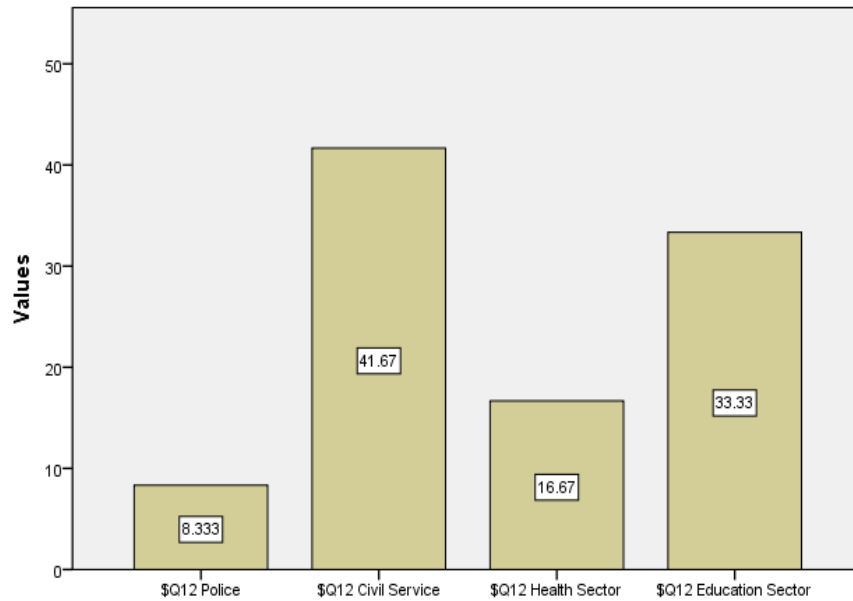


Figure 4: Most cooperative Agency of government in the implementation of the FOIA.



Figure 3 above shows the most cooperative of the three arms of government. Both executive and legislative arms of government (37.5% each) are most cooperative while the judicial arm of government is the least cooperative (25%). When asked the reasons for their choice, two journalists responded.

**Respondent 1:** "The executive is the most cooperative of all the arms of Government because they always allow journalists to interview them on happenings in Government."

**Respondent 2:** I choose the legislative as the most cooperative because their activities are generally in the open and there is even a section for journalists to monitor their proceedings. There is nothing more cooperative than this." In Figure 4 which inquires about the most cooperative agency of government, findings show that the civil service with 42% is the most cooperative while the police with 8% is the least cooperative agency of Govt. When asked why most journalists believe civil service is the most cooperative in the implementation of the FOIA, the following were the responses.

**Respondent 1:** "the civil service is the most cooperative because their dealings are always well documented. There is a record of all their activities. This is helpful to the journalist"

**Respondent 2:** "The police are never cooperative. They are arrogant because they think you have no right to question them."

### **Research Question 3**

#### **What are the shortcomings of the FOIA?**

In this question, most journalists responded can be grouped into two clusters:

1. Cluster 1 (lack of cooperation): some of the journalists are of the view that many Government agencies still refuse to cooperate with journalists as shown below:

**Respondent 1:**"Many agencies just simply ignore journalist when they ask for information."

**Respondent 2:**"Some government officials think you want to destroy them and so they refuse you to let you give the most important information."

2. Cluster 2 (Absence of proper documentation): respondents are of the view that lack of good and proper documentation by Government agencies hinder the proper implementation of the FOI Act as shown below.

**Respondent 1:** "It is always difficult perusing official documents of Government. Many of them are clumsy."

**Respondent 2:** "You might need a document from Government only to find out that one or more pages are missing. As a result, you cannot make sense of some documents that are handed over to you."

Findings also show that the majority of respondents (74%) agree that the FOI Act needs to be reviewed with more powers to retrieve information for the public good and removing these existing hurdles.

### **Discussion of Findings**

Based on the findings of this study all respondents are aware of the Freedom of Information (FOIA) . This shows that journalists follow the trend of happenings particularly the legal aspect of their job since the FOIA is a legal tool that assists journalists to carry out their work. Three out of every four journalists believe that is the Executive and Legislative arms of government that are the most cooperative when it comes to the implementation of the FOIA while the judicial arm of government is the least cooperative. Many journalists argue that the cooperativeness of those two arms of government is because the executive arm of government grants journalists quite easily while the legislative arm of government is very accessible by journalists, particularly during their normal legislative business.

When asked the government agency that is the most cooperative, the majority of journalists agree that it is the civil service arguing that it is because civil service has documentation for their businesses while the police are the least cooperative giving that they exhibit arrogant attitude toward enquiries. On the question of the shortcomings of the FOIA, findings show that journalists responses fall into two clusters (1) lack of cooperation in which most journalists say that many government officials simply refuse to cooperate with journalists in their enquiry about Government dealings and (2) Absence of proper documentation,

in which journalist asserts that lack of proper documentation of Government dealing hinders the effectiveness of the FOI Act. The research findings show that the majority of journalists want a review of the FOI Act to have more legal power to compel the disclosure of information for the public good.

### **Conclusion**

Based on the preceding discussion, it can be concluded that the majority of journalists are aware of the FOI Act. Similarly, three out of every four journalists believe that the executive and legislative arms of government are the most cooperative while the judicial arm of government is the least cooperative. they believe this because while the executive arm of government grants journalists' interviews quite easily the legislative arm of government gives journalist easy accessibility to their legislative business. Also, the civil service is the most cooperative agency of government because it documents most of its business while the police are the least cooperative because of its arrogant attitude towards enquiries. Many journalists are of the views that lack of cooperation and absence of proper documentation are the main shortcomings of the FOIA while a review of the FOI Act for more legal power to compel the disclosure of information for the public good is expedient to correct those shortcomings.

### **Recommendations**

Based on this study the following are recommended: Journalists should continue to use the FOIA for the public good. More research should be conducted with journalists of other formats such as print since a majority of the respondents used in this study were broadcast journalists. Government should ensure its agencies cooperate with journalists for the good of the public. The umbrella body of Nigeria's journalists should push to review the FOIA so that it gets more legal power that will enable journalists to obtain information for public good with ease.

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