



## Freedom of Information Act and Social Media Escapades: The Challenges Facing Journalists in Nigeria

**Oshega Abang, Patrick Ene Okon and Aye Henshaw**

Department of Linguistics & Communication Studies

University Of Calabar-Nigeria

[Abangoshega@Yahoo.Com](mailto:Abangoshega@Yahoo.Com)

[Eneokon@Yahoo.Com](mailto:Eneokon@Yahoo.Com)

[ayehenshawjnr@Yahoo.Com](mailto:ayehenshawjnr@Yahoo.Com)

### Abstract

The Freedom of Information Act, (FOIA) was signed into law on May 28, 2011. The Act seeks to make public records and information freely available with a view to promoting open government as well as engender transparency and accountability in governance. Five years after the Act was signed into law, journalists and the citizens are yet to effectively utilize the Act to bring about good governance, and in the absence of credible and authoritative sources of information citizen are now relying on escapades from some social media networks for information that are speculative and tension generating. A total of 300 text messages and chats on Facebook and WhatsApp were reviewed and analyzed to determine the gullibility of citizens in information acquisition and dissemination. The knowledge gap theory propounded by Philip Tchenor *et al.*, (1970) was used to stress the inequality in information acquisition between the privileged and ordinary members of the society. Our findings reveals that government agencies are yet to evolve the culture of record keeping to meet the requirements of the FOIA and that government and her functionaries are very reluctant in volunteering needed information. The paper recommends that public and private agencies should render public service by granting the public unfettered access to official information as a matter of obligation.

**Keyword:** Freedom of Information Act, Social media, Investigative Journalism, Public Institutions.

### **Introduction**

Information as a concept is widely used to describe contemporary society in terms of what is thought to be the most central driving force or service of productive power. The justification for such an assumption is derived from the seeming dependence of the global community on information and communication processes in their complex networks of relationships. This dependence has made information and communication technology the chief source of wealth in several economically advanced societies (Oshega A, 2010: 3).

Information is encoded and decoded, and in the absence of reliable and adequate information, people resort to rumour and speculation about events of great concern to the society. Put in other words, the absence of authorities, reliable, adequate and required information breeds rumour which is dangerous for the growth and development of a democratic nation. Information in all ramifications serves as a bulwark of democracy in view of its enormous responsibility and power in shaping opinions, thoughts and choices of the citizens (Oshega A, 2010: 8). In recognition of these facts, the Federal Republic of Nigeria in its 1999 constitution, sections 22 and 39 (as amended), obligates the media and indeed, all Nigerians to engage government in the realization of the fundamental objective and directive principles of state contained in the constitution.

Similarly, section 39 (1-3) of the constitution provides for Right to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. Inherent in the freedom of expression, which is held to be a basic human right, is the right to freely access information, as provided in Article 39 of the Universal Declaration of Human Rights (UDHR), Article 9 (2) of the African Charter on Human and People's Rights; and Article 19 (2) of the International Covenant on civil and Political Right (Odinkalu and Ledum, 2011: 20).

This paper seeks to determine why citizens now armed with the greatest and most powerful instrument for direct and uninhabited access to information. "The Freedom of Information Act", still defer to speculations, rumour and gossips in public communication and information dissemination. It also seek to highlight the investigative capacities of journalist in their effort to curb the many electronic

devices in breaking news. It is basically a content analysis of some media blogs, pokes and the rebuttals in traditional media to speculative genres, quite often accepted and peddled as reliable and credible information. The paper takes its theoretical focus in the knowledge Gap theory propounded by Philip J. Tchenor *et al.*, (1970) and Lindlof (1989), both theories propose that as a result of social economic situations, people with different backgrounds tend to acquire information faster or slower than others. It notes that just as the society is divided their access or sources of information differs and are sometimes commodified; on the other hand, Lindlof (1989) states that media is used as a reflection of a particular socio-cultural milieu and as a process of giving meaning to cultural products and experiences in everyday life, since media genres share much the same forms of discourse and framework in their dissemination.

### **Prognostic View of Freedom of Information Act**

The freedom of information Act, (FOIA), 2011 signed into law on May 28, 2011 seeks to make public records and information freely available, engender transparency and accountability in government as well as promote good governance and other democratic values necessary for the sustained development of the country (Akper, 2011 : 2).

The Act consists of 32 sections with rights and duties imposed to facilitate the public and the media in particular in the discharge of the obligations contained therein. Specifically, sections 1 (1-3) and 2 (1-3) of the Act focusses on the Right of Access to records and information about public institutions, state and functionaries as follows:

#### Section 1:

- (i) Notwithstanding anything contained in any other act, law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution however described, is established;
- (ii) An applicant under this Act needs not demonstrate any specific interest in the information applied for;
- (iii) Any person entitled to the right to information under this Act, shall have the right to institute proceedings in the court to compel any public institution to comply with the provisions of this Act.

Sections 2 (1-3 and, 4 (b (i)) states that:

Section 2:

- (i) A public institution shall ensure that it records and keeps information about all its activities, operations and businesses;
- (ii) A 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;
- (iii) A public institution shall cause to be published in accordance with sub-section (4) of this section, the following information, 4 (b) a list of all:
  - (b i) classes of records under the control of the institution in sufficient details to facilitates the exercise of the right to information under the Act. (FOIA, 2011: 3-6).

Historically, the Freedom of Information Act of 1962 metamorphosed into the official secrets, Act, Cap 03 of 2004 that was modelled after the English official secrets Act (1911). The Act is not just an abstract piece of legislation, its deals are firmly rooted in the 1999 constitution of Nigeria in section 39 (1) as amended. Thus, the Act gives effect to the right of access to information by:

- i. Proactively putting in the public domain government information of public interest;
- ii. Making every effort to ensure easy, prompt, effective and practical access to such information,
- iii. Enacting necessary procedures, whereby one may gain access to information; and
- iv. Providing reasons for any refusal to provide access to information.

Laudable and self-explanatory as these provisions are, it becomes worrisome to note that citizens believe that the Acts lack the much needed teeth to bite given the dearth of identifiable challenges in government and governance. And with the rising level of insecurity, corruption, poor record keeping and daily clamp down on the media by security agencies, the fear is that, there is a near absence or sufficient commitment to the implementation and, or the utilization of the Act (Sado, 201; Akper, 2014; Iredia, 2014).

## **Watchdog Journalism, Agenda Setting and the Road not yet Taken**

According to Pippa Norris who edited public sentinel: News media and governance reform for the World Bank Institute;

The watchdog role of the media entails exercising some oversight over the public realm in ways that ensure that various actors and agents are kept in check and held to the requirements of their roles in the polity. The watchdog function is closely related to democratic accountability, which is based on the understanding that the only way that the various freedoms, civil liberties, and other constitutional provisions, and indeed democracy itself can be protected and sustained is when those who occupy positions of responsibility are made to respect those provisions and freedoms. That is, they must imbibe, protect and practice the tenets of the rule of law, thereby eschewing any inclination toward arbitrariness and abuse. Accountability also flows from the notion of good governance, which is premised in manifest behaviours, attitudes, and actions that are in conformity with the principles of transparency, efficiency and accountability. (Norris, 2004: 283).

Pippa Norris admonition, the paper believes is the road Nigeria media are yet to take, perhaps, because they are too undercapitalized to be independent. The question may be asked, what is investigative journalism that the freedom of informant Act can enhance in Nigeria's contemporary situation? Perhaps an examination of a worn out catchphrase from a United Nations McBride Commission report in the early 1970s will provide a deep insight. In the report, there was a subhead entitled, "Under Rights and Responsibilities of Journalists" in which the commission reiterated the role of the investigative journalist in a very distinctive manner thus:

Those in authorities often tend to conceal that which is convenient or likely to arouse public opinion against them... active pursuit and disclosure of opinion against of facts, which are of public interest is one of the criteria to judge a journalist's professional capacities... the role of the investigative journalists is to question and probe the action of those in authority and to expose them whenever there is abuse of power, incompetence, corruption and other deviations... (UN report 1970).

### **Diagnostic view of the Freedom of Information Act**

Although the freedom of information Act obligates the media and the public to seek for necessary information, the burden seem to rest only on the media that also have the constitutional roles to hold government accountable to the people. That is why the Nigerian media and journalists in particular should evolve characteristics of investigative reporting by engaging in:

- i. Producing stories that would not have been revealed without the enterprise of the reporter and the report;
- ii. Providing the reader/audience with stories of public importance that are pieced together from diverse and often obscure sources;
- iii. Revealing stories that may be contrary to the version advanced or announced by government or business officials who might have tried to conceal or distort the truth; and
- iv. Producing stories that feature prominently in a newspaper or lead in broadcast newscast about corruptive influences in our public life.

Investigative journalism is all about significant public issues aimed at making institutional power more transparent and accountable. It educates, engages and empowers citizens with the right tools and skills (information) they need to hold government and institutions to account.

The truth is that, more crime, immorality and rascality can be prevented through fear of exposure in the newspaper than by all laws, moral and statutes ever devised... (Joseph Pulitzer, 2011: 5)

Unfortunately, investigative journalism has not and may not in the foreseeable future be part of the Nigerian media culture not only because news media owners and their management have not been serious about its implications, but also because, journalists in Nigeria delights in writing columns, opinions, special reports and editorials than be involved in thorough investigations.

More worrisome is the fact that, attempts in the past to do something extra-ordinary resulted in some state and non-state actors to impute motives with fingers of accusation openly directed at imaginary enemies as sponsors of reports such as:-

- i. How much has actually been allocated to education especially tertiary education for the period 2007 to 2015?
- ii. Do we have verifiable records of federal and state roads and their states in relation to budgetary allocations to them for the period 2011-2015?;
- iii. How do the federal and state legislators spend their capital votes and constituency project votes in their states?
- iv. Does the constitution of the Federal Republic provide for the office of the first lady, if no, how is the office financed?
- v. How were the MGD projects in some states executed and who executed them?

Although, the Nigerian Media Landscape has been adjudged to have improved with the Freedom of Information Act paving the way for the media and citizens, to have enough access to information, the reverse is rather the case especially now that the social media seem to hold and disseminate more information than from authoritative and credible sources of information. Specifically and regrettably, citizens quite often rely more on speculative genres from NAIJ.com Yahoo Mail, GOOGLE NEWS NG, DISCLAIMER and Sahara reports. For instance, NAIJ.com have unconfirmed or substantiated stories such as:

- i. Fashola's ministry misappropriates N9.2 billion
- ii. Governor Fayose turns tailor?

- iii. Makarfi: Fayose surrender, recognize Modu-Sheriff as PDP national chairman.
- iv. Buhari's health: he is death, he will return soon---
- v. Buhari Presidency opens up... political parties say the lies must stop...
- vi. Osinbanjo has outshined Buhari, Nigerians will reject the president when he comes back...

## **DISCUSSION AND ANALYSIS**

The thirst for the passage of the freedom of information Act (FOIA), after several years of lobbying by professionals in the media industry, has been finally assuaged. However, in spite of the zeal and passion with which media practitioners, lawyers and civil society organizations pursued the passage of the Act, the same efforts seem not to have been put into testing it since its passage.

It would appear that many Nigerians, including journalists may not have understood the contents of the act despite the concerted efforts made to sensitize media practitioners, civil society's organizations and the general public on the contents of the freedom of information Act (FOIA).

The Act, it is believed, could help promote a behavioral or attitudinal transformation which could also accelerate national development, reduce the level of corruption and corruptive influence so far observed in the nations public life (Nnene Antia, 2015:15).

The truth is that, it is impossible for democracy to thrive where trust, confidence, integrity and consistency are lacking. The act, though not a solution to all problems of transparency and good governance, could however, be used as a commencement point to effectively provide good governance if sustainable development in Nigeria has to be knowledge and information driven especially now that we all live in a global village that is information, communication and technology based (Ngozi Ikeyi, 2012: 18).

### **Social media or social Nuisance?**

The right to know is a fundamental Human right, which together with the public interest constitutes the pillar on which all transparency



laws particularly. Access to information (ATI) and the freedom of information Act (FOIA) are erected. Corroborating this, the Fitzgerald Report (1980) describes information as:

The Lynch-pin of the political process:, it adds that knowledge is, quite literally, power, but if the public is not informed, it cannot take part in the political process with any real effect (Arogundade, 2012:1).

Observably, Nigerians now seem to rely more on information made available to them through the social media, an online community with avenues for social and political interactions among people who share similar interest. Statistics, as at February 2016 shows that about 27.2 million Nigerians own or have access to the internet and that, there is a rising popularity of social media networks in the country and the addiction is more apparent with a vast majority of youths who are deeply engrossed with the social media. This is the crux of the matter. Why do Nigerians rely on speculative genres ad narratives from the social media, when an Act has been signed into law to make information more accessible to the citizens?

Research reveals that, most political campaigns in Nigeria now go online, in line with the great number of subscribers. President Goodluck Jonathan pioneered the online campaign in Nigeria, in the April 2011 general elections. Only recently, research reveals that about 7.2 million people in Nigeria visit Facebook each day and about 97% of these access the social media sites on their mobile devices ([www.financialnigeria.com](http://www.financialnigeria.com))

Although social media have been competing favourably with the conventional media, serving as an easier, faster and more liberal source of information devoid of the usual internal and external control, their networks have unfortunately, been found to, oftentimes, favour misinformation and sensationalism, while issues that could normally be verified in the conventional media go unchecked and unedited (Oshega Abang, 2015: 10).

Specifically, social media reports are often subjective, misleading and Smack of mischief as manifest in the “Buhari’s health concerns”. That created great tension and apprehension even among the educated elites in Nigeria.

### **FOIA and Public Interest**

An emerging trend in the quest for transparency in governance should and ought to be the subjection of the FOIA to what is termed public interest test (PIT) if only to determine the efficacy in protecting, the right of citizens to access information held by public bodies. Usually, the public interest test is applied in relation to exemption clauses and often the question for determination is, whether or not certain information should or should not be released in the public interest despite the exemptions. But if we examine the explanatory note to the Act as well as the exemption clauses, it could reasonably be said that, the clauses meets the public interest expectations.

For the avoidance of doubts the explanatory memorandum states that:

This Act makes public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedures for the achievements of those purposes.

Basically, the exemption clauses and the underlying public interest consideration in the FOIA Act relates only to International Affairs and Defence.

Thus section 11 (1) of the Act states that:

A public institution may deny an 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.

This exemption is however, negated in section 11(2) which states that:

Notwithstanding subsection (1), an application for information shall not be denied where the public interest in disclosing the information outweighs whatever injury the disclosure would cause.

The questions now are:

- i. What information if any, is available to the public on the state of health of President Muhammadu Buhari?
- ii. Who owns the Garment factory located along the Goodluck by-pass in calabar?
- iii. Was the factory originally registered as a government owned concern?
- iv. If yes, did the functionaries of government follow due process in the registration procedures?
- v. How much has been allocated to states as “Bail-out” grants since 2015?

Nigeria’s media industry has recorded major landmarks since the missionary, Henry Townsend established the first. Newspaper called Iwe Iroyin in 1959; and media, development statistics in the country in the past 20 years, reveals that has greatly expanded such that, the nation now boast of over 200 government owned broadcast stations, 120 private broadcast stations and over 50 daily newspapers and weekly magazines. Why then are the citizens still patronizing speculative junks that are neither, authoritative, credible and have no reliable sources?

### **Observations/Findings**

The findings of this paper reveals that the provisions of the Freedom of Information Act are procedural in information acquisition and are often not followed diligently especially where security, corruption and political issues are involved. The lack of patience on the path of the investigators leaves much to be desired. The result is that many people now resort to social media reports most of which are subjective, misleading and Smack of mischief.

Specifically, socially media networks gain more relevance and acceptability in times of mass protests and rallies. For instance, Facebook Twitter and other social networks like WhatsApp were used to rally protesters that led to the ouster of Arab leaders in Tunisia, Egypt and Libya (Arab Spring). The London Riots between 6-10, August 2011 were also attributable to social media (Sunday trust, January 30, 2011 p. 36).

Indeed, what makes these spontaneous acceptability and participation is the level of co-ordination and sustenance of the social networking sites. The consequence of these include the success of the "OCCUPY Nigeria" Movement and, The Bring Back our Girls' protest which impacted negatively on the nation's economy.

Beside, social media networking also gave a voice to the mass protests in the Middle East, and has contributed negatively to the end of some high profile politicians as well as damaged celebrities images. Finally, what had hitherto, appeared foreign, now adequately applies in Nigeria as the social media have also been found to contribute to the hype and notoriety of the Boko Haram sect, as reports of violence, killings by the Fulani herdsmen and police brutality towards protesters gets to the doorsteps of the citizens before conventional media reports.

### **Conclusion/Recommendations**

An age long challenge that has, or is becoming intractable with conventional media professionals is the issue of how to balance the ethical dilemma of being a free and responsible press. Today, there are several impediments to investigative journalism. These include lack of editor's supports; proprietary interests, politicization of issues, deficiency in training of journalists and quackery in the profession.

Specifically, the findings reveals that, up to date most public institutions still do not have a tradition of proper record keeping and that governments and their functionaries at all levels are not showing, or are reluctant in showing sufficient commitment to the utilization of the Freedom of Information Act. The consequence of these is that, the social media is gradually becoming a palpable threat rather than a research toll for the print and electronic media.

Against these backdrop, the paper recommends that governments at all levels, as well as public and private agencies should evolve measures aimed at protecting and managing information they hold in trust and provide such information on demand in a manner consistent with public interest. Finally, adequate budgetary provisions should be made for public institutions to establish functional and updated websites to reduce the temptation of journalists or the public from relying on rumour and speculations in social media reportage but utilize effectively the Freedom of information Act for blackmail and political ends.

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