

# Reporting Electoral Campaign Finances: An FOI Manual for Journalists



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**International Press Centre**

House 11, Dideolu Court, Dideolu Estate,  
Off Ijaiye Road, Ogba, Lagos, Nigeria.

**Tel:** +234-802 318 6845

**Email:** [admin@ipcng.org](mailto:admin@ipcng.org)

**Website:** [www.ipcng.org](http://www.ipcng.org)

**Media Rights Agenda**

21, Budland Street, Off Isheri Road,  
Ikeja, Lagos, Nigeria.

P. O. Box 52113, Ikoyi, Lagos.

**Tel:** +234-1-7916803

**E-mail:** [pubs@mediarightsagenda.net](mailto:pubs@mediarightsagenda.net)

**Website:** [www.mediarightsagenda.net](http://www.mediarightsagenda.net)

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## PREFACE

The passage of the Freedom of Information Act in Nigeria in 2011 has opened up new prospects for journalists who may be interested in and willing to pursue investigative reporting in an environment where any such proposition was previously an extremely risky one.

The new law not only removed most of the legal impediments which journalists used to face in trying to obtain information and records from government officials, institutions, departments and agencies, it has actually makes it obligatory for such public institutions and officials to provide information to anyone, including journalists, seeking such information unless the information is specifically exempted from disclosure under the Act.

The Act neutralized the constraining effects of negative provisions and consequences of restrictive laws such as the Official Secrets Act, the Criminal Code, the Penal Code, and other such laws while also overriding the secrecy clauses which characterize many laws in Nigeria.

Since the Act was passed, both the media and other members of the public are now better placed to obtain public information as it imposes an obligation on the government, its officials, departments and agencies, to grant anyone access to documents, records and other information held by any public institution. Where public officers and institutions refuse to disclose or release information that is requested from them, the Act makes it possible for them to be compelled to do so through the judicial process.

The Act therefore represents a very powerful tool for any journalist who wants to carry out investigative reporting. However, despite this new reality created by the Act, its use, especially by journalists and the media sector in general, has been relatively low since it came into existence.

This manual has been produced in response to that situation and is designed to enable journalists take advantage of the Freedom of Information Act and enhance their capacity to conduct investigative reporting, particularly in the context of elections and political

campaigns financing so as to ensure transparency in the process.

Despite a rash of relevant laws and regulations over the last few years, political campaign finance and campaign spending remain among the most opaque aspects of Nigeria's electoral practices and stands out as an area where electoral laws and regulations are most often violated with impunity. Since the election management body, which has statutory oversight responsibility appears unable to rein in this unruly horse, the issue is in dire need of focus and attention.

The manual looks at the legal framework for political campaign finance, identifying the applicable provisions of the Constitution and other laws, guidelines and regulations; and the applicability of the Freedom of Information Act to political parties. It examines in detail how the Act can be used for investigative reporting and its utility as a tool for journalists, especially for investigating political campaign financing.

The manual provides a step-by-step guidance for journalists on making requests for information with the Act. But it also examines the ethical and professional issues relevant to the use of the Act by journalists, stressing that although the Act now enables media practitioners, like other members of the society, to get information from public and private institutions covered by the Act, regardless of the fact that a piece of information may have been obtained through the Act, journalists still have a duty to comply with their professional Code of Ethics in using that information. It identifies a number of relevant provisions in the professional code and analyses their implications in the face of the Freedom of Information Act.

It promotes the idea of a routine and regular use of the Freedom of Information Act by journalists in the course of their work, indicating that such a practice gives them a real chance to live up to the obligations of the Media under Section 22 of the Constitution, which provides that: "The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter (Chapter Two) and uphold the responsibility and accountability of the Government to the people."

**Edetaen Ojo**

Executive Director, Media Rights Agenda



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## FOREWORD

When the publishers of this manual: International Press Centre, IPC, and Media Rights Agenda, MRA, represented by Mr. Lanre Arogundade and Mr. Edetaen Ojo asked me to write the Foreword, I didn't hesitate to accept.

Over the years, the duo has shown their unwavering commitment to the campaign for openness, accountability and free speech—all ingredients of a democratic society.

Arogundade's tenure as the Chairman of the Lagos State Council of the Nigerian Union of Journalists in the 90s remains a reference point for its relentless advocate for a better society and capacity building for journalists.

And the history of the campaign for the enactment of the FOI Act 2011 will be incomplete without the steadfast role played by the MRA, an organisation founded by Edet to promote free speech and ensure that the people have access to information for them to be able to hold their leaders to account.

Therefore, to be asked by these generals of the army of a free and open society to write the Foreword to this very important manual is an honour.

The authors rightly captured the necessity of the manual to journalists when they note: “Political finance has a decisive effect on the operations and the quality of democracy, yet little attention is being paid to the issue of party funding and campaign finance in Nigeria.”

In six short chapters, the authors provide a guide to reporters on how to report campaign finances.

Chapter One, which is the introductory chapter laments the lack of transparency in the electoral process and the consequence.

It also restates the role of the media in monitoring the electoral process.

Political campaigns: Legal framework is the title of chapter two. Expectedly, the authors listed the relevant legal framework on political campaign finance. These are:

The 199 Constitution (as amended);



The Electoral Act 2011 (as amended);

Guidelines and Regulations for political parties 2013,

Companies and Allied Matters cap (20) LFN 2004.

While journalists may be familiar with the relevant sections of the Constitution and the Electoral Act, it is doubtful whether they have had course to go through the relevant provisions of the Company and Allied Matters Act, quoted by the authors.

Section 38, subsection 2, for instance prohibits corporate bodies from making contributions to political parties.

An interesting subtopic under this chapter is: FOI and Campaign Finance.

Are political parties public institutions? You will find the answer in this chapter.

Using the FOI Act for investigating campaign finances is the title of Chapter three. In this chapter, the journalist is taken through how the diligent reporter can use the FOI Act for investigative reporting.

Why should journalists be concerned with campaign finances? How can the journalist use the FOI Act? Answers are provided in this chapter.

The next chapter addresses what may be described as Frequently Asked Questions, FAQ, on FOI. It answers questions like: Who can request information? What type of information can be requested for? Which public institution can be approached for information? How does one request for information? And how is the application for information written, among others?

Chapter five discusses the Ethics and professionalism in the use of the FOI.

As Editor of The Punch I am proud to be part of the media fraternity which drew up the Code of Ethics for Nigerian journalists in 1998.

This chapter contains the 1998 Code of Ethics and explains the relationship of the Code with FOI Act.

The final chapter, with the title: Writing the Story, refreshes the journalist's memory on

the “How” and “Why” of investigative journalism.

This manual is another commendable attempt at building the capacity of journalists. It will assist the diligent reporter in reporting fairly, accurately and effectively.

As a trainer of journalists and a member of the Nigerian Bar Association, I have benefited immensely from reading this manual.

I have no hesitation in recommending it to journalists, politicians scholars and the general public.

**GBEMIGA OGUNLEYE**  
PROVOST,  
NIGERIAN INSTITUTE OF JOURNALISM  
LAGOS.

## CHAPTER ONE

### Introduction

It is now well-established that transparency is critical to the freeness, fairness and credibility of electoral processes and that where the electoral process lacks transparency, it loses credibility and public confidence.

Lack of transparency in the electoral process can result in lack of transparency in the activities of critical institutions in the process, such as the political parties. The lack of transparency may also result in a breach of the rules by some of the actors in the process as the lack of transparency can make it difficult to ascertain whether relevant laws, codes, standards, guidelines, etc, are being complied with.

Transparency is therefore critically important for building and maintaining public trust and confidence in the electoral process.

The media also plays a key role in ensuring the transparency of the electoral process. Two functions of the media are particularly relevant and important in this regard. These are its watchdog role, which is part of the *raison d'être* of the media, reinforced by its constitutional role as prescribed by Section 22 of the Nigerian Constitution of 1999 (as amended) as well as its responsibility during an electoral process, to inform voters about the processes, issues and programmes involved, including the track records of the contestants. The media has the duty to educate citizens and potential voters about the contestants in the elections, and to hold them accountable.

One aspect of the electoral process where the law and practice in Nigeria have been acknowledged to be deficient is in relation to the financing of political campaigns, as the political process continues to be challenged by the non-disclosure of the sources of huge contributions by politicians, other individuals and corporate bodies towards political campaigns.

A more active role by the media in focusing attention on the issue could help to improve the process. The Freedom of Information Act provides a tool with which the media community could engage the issue more and be conceivably more effective in exposing breaches of standards and regulations.

## CHAPTER TWO

# Political Campaigns Finance: Legal Framework

The election or political reporter concerned about campaign finance issues should be well-abreast of the following relevant framework on Political Campaigns Finance:

1. The 1999 Constitution
2. Electoral Act 2011 (as amended)
3. 2017 Amendment to the Electoral Act passed by Senate on 30th March
4. Guidelines and Regulations for Political Parties 2013
5. Companies and Allied Matters Act, Cap C20 LFN 2004

- **The 1999 Constitution (as amended)**

Section 221 – Prohibition of Political activities by certain associations.

No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election.

Sections 225 – Finances of Political parties.

### **Section 225(1)**

Every political party shall, at such times and in such manner as the Independent National Electoral Commission may require, submit to the Independent National Electoral Commission and publish a State-

ment of its assets and liabilities.

### **Section 225(2)**

Every political party shall submit to the Independent National Electoral Commission a detailed annual statement and analysis of its sources of funds and other assets together with a similar Statement of its expenditure in such form as the Commission may require.

### **Section 225(3)**

No political party shall –

- a) hold or possess any funds or other assets outside Nigeria; or
- b) be entitled to retain any funds or assets remitted or sent to it from outside Nigeria.

### **Section 225(4)**

Any funds or other assets remitted or sent to a political party from outside Nigeria shall be paid over or transferred to the Commission within twenty-one days of its receipt with such information as the Commission may require.

### **Section 255(5)**

The Commission shall have power to give directions to political parties regarding the books or records of financial transactions which they shall keep and, to examine all such books and records.

### **Section 255(6)**

The powers conferred on the Commission under subsection (4) of this section may be exercised by it through any member of its staff or any person who is an auditor by profession, and who is not a member of a political party.

### **Section 226(1)**

The Independent National Electoral Commission, shall in every year prepare and submit to the National Assembly a report on the accounts and balance sheet of every political party.

### **Section 226(2)**

It shall be the duty of the Commission, in preparing its report under this section, to carry out such investigations as will enable it to form an opinion as to whether proper books of accounts and proper records have been kept by any political party, and if the Commission is of the opinion that proper books of accounts have not been kept by a political party, the Commission shall so report.

### **Section 226(3)**

Every member of the Commission or its duly authorised agent shall –

- a) have a right of access at all times to the books and accounts and vouchers of all political parties; and
- b) be entitled to require from the officers of the political party such information and explanation as he thinks necessary for the performance of his duties under this constitution, and if the member of the Commission or such agent fails or is unable to obtain all the information and explanation which to the best of his knowledge and belief are necessary for the

purposes of the investigation, the Commission shall state that fact in its report.

**Section 228(c)** - The National Assembly may by law provide –

for an annual grant to the Independent National Electoral Commission for disbursement to political parties on a fair and equitable basis to assist them in the discharge of their functions; and ...

Part 1 of the third Schedule of the Constitution

Paragraph 15(c) - gives the Commission general powers to monitor the organisation and operation of Political Parties including their finances.

Paragraph 15(d) - empowers the Commission to arrange for the annual examination and auditing of the funds and accounts of political parties and publish a report on such examination and audit for public information.

Paragraph 15(f) – empowers the Commission to monitor political campaigns and provide rules and regulations which shall govern the political parties.

- Critical question: Are the above provisions of the constitution being complied with or are they being breached? What are the reasons?

Electoral Act 2011(as amended)

**“Section 88** - Offences in relation to finances of a Political Party

(1) Any Political Party that - (a) holds or possesses any fund outside Nigeria in contravention of section 91(3) of this Act:

(a) commits an offence and shall forfeit the funds or assets purchased with such funds to the Commission and on conviction shall be liable to a fine of not less than N500,000.00;

(b) retains any fund or other asset remitted to it from outside Nigeria in contravention of section 91(3)(b) of this Act is guilty of an offence and shall forfeit the funds or assets to the Commission and on conviction shall be liable to a fine of not less than N500,000.00.

**Section 89** – Period to be covered by annual statement

(1) Every political party shall submit to the Commission a detailed annual statement of Assets and Liabilities and analysis of its sources of funds and other assets, together with statement of its expenditure in such a form as the Commission may from time to time require.

(2) The Statement of Assets and Liabilities referred to in subsection (1) of this section shall be in respect of the period 1st January to 31st December in each year, and that in the year which this Act comes into operation, it shall be for the period beginning with the registration of such party and ending on the following 31st December.

(3) Every political party shall grant to any officer, authorized in writing by the Commission, access to examine the records and audited accounts kept by the political party in accordance with the provisions of this Act and the political party shall give to the officer all such information as may be requested in relation to all contributions received by or on behalf of the party.

(4) The Commission shall publish the report on such examinations and audit in three National Newspapers.

**Section 90(1)** – Power to limit contribution to a political party

(1) The Commission shall have power to

place limitation on the amount of money or other assets, which an individual or group of persons can contribute to a political party.

**Section 91(1)** - Limitation on election expenses

(1) Election expenses shall not exceed the sum stipulated in subsection (2) – (7) of this section.

(2) The maximum election expenses to be incurred by a candidate at a Presidential election shall be one billion naira (N1,000,000,000.00).

(3) The maximum election expenses to be incurred by a candidate at a Governorship election shall be two hundred million naira (N200,000,000.00).

(4) The maximum amount of election expenses to be incurred in respect of Senatorial seat by a candidate at an election to the National Assembly shall be forty million naira (N40,000,000.00); while the seat for House of Representatives shall be twenty million naira (N20,000,000.00)

(5) In the case of State Assembly election, the maximum amount of election expenses to be incurred shall be ten million naira (N10,000,000.00).

(6) In the case of a chairmanship election to an Area Council, the maximum amount of election expenses to be incurred shall be ten million naira (N10,000,000.00).

(7) In the case of councillorship election to an Area Council, the maximum amount of election expenses to be incurred shall be one million naira (N1,000, 000.00).

(8) In determining the total expenditure incurred in relation to the candidature of any person at any election, no account shall be taken of:-

(a) any deposit made by the candidate on

his/her nomination in compliance with the law; (b) any expenditure incurred before the notification of the date fixed for the election with respect to services rendered or material supplied before such notification.

(c) Political party expenses in respect of the candidate standing for a particular election.

(9) No individual or other entity shall donate more than one million naira (N1,000,000.00) to any candidate.

(10) A candidate who knowingly acts in contravention of this section commits an offence and on conviction shall be liable – (a) in case of presidential election to a maximum fine of N1,000,000.00 or imprisonment of 12 months or both;

(b) in the case of a governorship election to a fine of N800,000.00 or imprisonment for 9 months or both;

(c) in case of senatorial seat election in the National Assembly election to a fine of N600,000.00 or imprisonment for 6 months or both;

(d) in the case of House of Representatives seat election in the National Assembly election to a fine of N500,000.00 or imprisonment for 5 months or both;

(e) in the case of a State House of Assembly election to a fine of N300,000.00 or 3 months imprisonment or both;

(f) in the case of Chairmanship election to a fine of N300,000.00 or 3 months imprisonment or both; and

(g) in the case of Councillorship election to a fine of N100,000.00 or 1 month imprisonment or both.

(11) Any individual who knowingly acts in contravention of subsection (9) shall on conviction be liable to a maximum fine of N500,000.00 or 9 months imprisonment or both.

(12) Any Accountant who falsifies or conspires or aids a candidate to forge or falsify a document relating to his expenditure at an election or receipt or donation for the election or in any way aids and abets the breach of the provision of this section of this Act commits an offence and on conviction is liable to 10 years imprisonment....”

Even with these limits, there is no enforcement of them from INEC, which has powers to monitor campaign finance, audit the accounts of political parties, and make that information available to the public, as enshrined in Section 153 of the Constitution, as well as Part 1 of the Third Schedule.

### **2017 Amendment to the Electoral Act passed by Senate on 30th March**

Section 156 of the Interpretation section defines published manuals, guidelines, regulations, procedures or directives issued by the Commission for the conduct of the election:

•“Published manuals, guidelines, regulations, procedures or directives issued by the Commission for the conduct of the election means any book, booklet or manual published by the Commission -

(a) that is consistent with the provisions of this Act;

(b) for the purpose of guiding the conduct of free, fair and credible elections; and

(c) which is made public by the Commission at least seven (7) days before the date of general elections.”

### **Companies and Allied Matters Act, Cap C 20, LFN 2004**

Section 38, Subsections 2 prohibits corporate bodies from making contributions to political parties. The Act specifically in Section 38 notes that: A company shall



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not have or exercise power either directly or indirectly to make a donation or gift of any of its property or funds to a political party or political association, or for any political purpose and if any company, in breach of this subsection makes any donation or gift of its property to a political party or political association or for any political purpose, the officers in default and any member who voted for the breach shall be jointly and severally liable to refund to the company the sum or value of the donation or gift and in addition, the company and every such officer or member shall be guilty of an offence and liable to a fine equal to the amount or value of the donation or gift.

### **Guidelines and Regulations for Political Parties 2013**

a. Candidates, Campaign Office, Fundraising by Candidates and Disclosure

#### **Section. 11. All candidates shall:**

a) Submit detailed address of their campaign offices to the Commission within 7 days from the date of publication of the notice of election.

(b) Notify the Commission of all events or meetings for the purpose of raising funds towards their campaign at least 7 days before such events or meeting.

b. Disclosure

12. All candidates shall disclose to the Commission records of all contributions and other sources of funds for their campaigns, as well as records of expenditure in a prescribed format issued by the Commission.

c. Books of Accounts

13. Every candidate shall:

(a) Maintain a record of all contributions as well as any other source(s) of funds. The records shall include the names, addresses, occupations of the donor(s) and amount donated.

(b) Maintain proper books of accounts and records of all expenses incurred during campaign.

d. Anonymous Contribution(s)

14. No candidate shall accept or keep in his/her possession any money anonymously donated or other contributions, gifts or property from any source whatsoever.

e. Audited Return

15. (1) All candidates shall:

(a) Submit detailed audited returns of their campaign expenses to the Commission within six (6) months after an election.

(b) Such returns shall indicate details of donations, other sources of funding, expenditure on goods, services and sundry expenses incurred for the purpose of election.

(2). The audited return on campaign expenses shall be signed by the candidate and supported by an affidavit sworn by the candidate as to the correctness of its content.

16. The Commission shall examine the records and audited accounts of candidates on their campaign expenses through any officer or body authorized by the Commission in writing.

Note: The law relating to the funding of parties limits the amount of funds individuals can contribute to a party campaign (S.91) but with an overriding subsection (8)(c) that says “In determining the total



expenditure incurred in relation to the candidature of any person at any election, no account shall be taken of: (c) political party expenses in respect of the candidate standing for a particular election.

INEC is empowered by the Constitution to monitor finances of political parties, conduct an annual examination and audit of the funds of political parties, and publish a report to inform the public. Political parties are also required to make their finances open to INEC's scrutiny and can be scrutinised, if need be, by the National Assembly. Section 90(9) of the Electoral Act empowers INEC to place limitations on the amount of money or other assets an individual or group of persons can contribute to a political party. CAMA also expressly forbids companies in Section 38 (2) from funding or donating gifts, property or money to any political party or association.

However the Commission lacks any enabling authority to enforce the provisions of the sundry laws.

Political Parties perform public functions and also receive ongoing public funding that will enable them to carry out their regular activities as prescribed by the National Assembly, by virtue of the constitution. Although the Electoral Act is silent as regards funding of political parties, the provisions of the constitution take precedence over that of the Act.

Critical question: Are political parties complying with the above provisions and is INEC enforcing compliance?

### **Political Campaign Financing: A Legal Framework**

According to Max Weber, "Party Finance is among the most important and yet,

for obvious reasons, the least transparent chapters of party history".

Political Finance has a decisive effect on the operations and the quality of democracy; yet little attention is being paid to the issue of party funding and campaign finance in Nigeria.

Elections campaign in Nigeria is very expensive due to cost of media spending, corruption, political culture, zero-sum game, crowd renting and weak political institutions (political-party-financing-and-corruption-in-Nigeria's-fourth-republic-the case-of-2015-general-elections-2151-6200-1000298.pdf).

Campaign finance is one of the essentials for the operation and existence of political parties, especially in preparation for elections; as political parties see the need to fundraise for a forthcoming election, either through the government or private persons, and same is the case in Nigeria.

Though in Nigeria, political fundraising for campaigning during an election is becoming a major concern to various stakeholders in the country; nonetheless, it has been one of the major sources of corruption in the country at the time of elections. The election process in Nigeria is primarily governed by the 1999 Constitution (as amended) and the Electoral Act 2010 (as amended), including other guidelines and regulations as may be made from time to time by the Independent National Electoral Commission (INEC).

In the bid to ensure transparency and accountability to the electorate and other stakeholders in the course of conducting elections, the finance of political parties should be monitored.

However, the constitution also provides that grants may be given to political par-



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ties at the discretion of the Federal Government of Nigeria. The Electoral Act 2010 does not provide for such, albeit the Act provides in Section 89 that political parties must submit a detailed annual statement and analysis of assets and liabilities of their sources of funds and other assets, together with the statement of its expenditure in such a form as the Commission may from time to time require.

#### Funding and Finances of Political Parties

The Constitution of the Federal Republic of Nigeria 1991 (as amended) makes provision for grants to be made available to political parties at the discretion of the Federal Government as Section 228 paragraph (c) states that the National Assembly may by law provide -

(c) For an annual grant to the Independent National Electoral Commission for disbursement to political parties on a fair and equitable basis to assist them in the discharge of their functions.

Section 15 (d) of Part 1 of the Third Schedule of the 1991 Constitution states that the Independent National Electoral Commission (INEC) is required to “arrange for the annual examination and auditing of funds and accounts of Political Parties and publish a report on such examination and audit.”

Although, the Electoral Act 2002 had the same provision, amidst others, which also was relied upon in the disbursement of money to political parties; such funding of political parties from the Federal Government stopped six years before the 2015 general elections.

However, there has been a clamour for the Federal Government to re-introduce sub-

ventions to political parties to enable them function optimally and make the desired impact. (The News, <http://thenewsnigeria.com.ng/2017/10/nigerian-political-parties-lament-stoppage-of-subvention/>).

#### FOI Act and Campaign Finance

Political parties are not public institutions outright, as it is a part of the definition of public institutions, according to section 2 (7) and 31 of the Freedom of Information Act 2011

Section 2 (7) of the Act states that, “Public institutions are all authorities whether executive, legislative or judicial agencies, ministries, and extra-ministerial departments of the government, together with all corporations established by law and all companies in which government has a controlling interest, and private companies utilizing public funds, providing public services or performing public functions.”

In addition, Section 31 of the Act states that, “public institution means any legislative, executive, judicial, administrative or advisory body of the government, including boards, bureau, committees or commissions of the State, and any subsidiary body of those bodies including, but not limited to committees and subcommittees which are supported in whole or in part by public fund or which expends public fund and private bodies providing public services, performing public functions or utilizing public funds.”

Although, political parties cannot be categorized as public institutions in the course of carrying out their duties, they can come under the purview of public institutions.

As code 4 of the Code of Conduct for political parties provides that, “No political

party shall use State apparatus including state owned print and electronic media to the advantage and disadvantage of any other political party or candidate at an election. That is to say, all ruling political parties shall allow other parties equal and fair access to the use of state owned print.”

However, the Code of Conduct does not state anything about finance of political parties.

Yet, the provision above can be used to imply that political parties which are allowed to use state-owned print are also public institutions.



## CHAPTER THREE

# Using the FOI Act for Investigating Campaign Financing

The Freedom of Information Act is a powerful legal tool that the diligent political or election reporter can use to aid his/her investigative reporting, including investigating and authenticating his/her findings on campaign finances.

At the heart of investigative reporting is the ability of the journalist to get information. Such information may be through official sources, e.g. through interviews, or records and documents officially made available to the journalist. It may also be through unofficial sources that the journalist has cultivated. In either case, the FOI Act is a great asset!

With the FOI Act, the journalist has a legal backing with which to demand for information from relevant agencies of government covered by the Act, and they are under obligation to provide the information requested. With the FOI Act, a journalist can request information that have to do with political campaign finances from relevant agencies, including the Independent National Electoral Commission (INEC), the Police and other law enforcement agencies etc.

The journalists can, with whatever in-

formation he/she receives, verify his/her findings, and establish whether government agencies are actually tracking and taking relevant actions on political campaign finances. Information obtained from agencies can also help the journalist establish whether the political parties and their candidates are complying with the laws guiding political campaign finances.

Investigative reporting is simply the putting together of evidence to substantiate or establish a fact or hypothesis.

The most important part of this process is getting documentary evidence which cannot be easily refuted.

Public records and documents are therefore frequently critical and invaluable assets for investigative reporting.

**They are important because they help the journalist to:**

- Get accurate and reliable facts on any issue or event;
- Bring previously unknown facts to light;
- Correctly report events that may have escaped public attention when they occurred or where the full facts were not

known;

- Verify information that the journalist may have obtained from anonymous sources, etc.
- There are multitudes of documents covering a wide variety of issues, generated daily and stored by various public institutions at all levels of government.

**The FOI Act therefore helps the journalist to:**

- Know if a particular information is available or exists;
- Determine who has the information;
- Obtain the record, document or other information from the custodian.

The FOI Act makes investigative reporting much more feasible, but it does not remove the necessity for tenacity and rigorous checking of facts.

Even with the FOI Act, investigative reporting remains a painstaking process of gathering evidence which may require the journalist to submit several applications for information to many different public institutions and possibly private entities.

The journalist may also have to go through a systematic process of tracking, sorting, analyzing and interpreting documents or information.

In addition, even where the journalist has obtained all the records or documents he/she requires, the journalist will most probably also need to conduct interviews, which are also important in investigative

reporting.

The records or documents the journalist has may not be sufficient to tell the whole story.

In addition to documents obtained from official sources, interviews are very important. Interviews may be needed for explaining technical data or information, cross-checking facts in documents, filling gaps in your information which are not explained by the documents; and getting expert or personal opinions on the facts contained in a document.

A journalist may also need to conduct interviews to give an opportunity to any person or institution indicted or negatively portrayed in the documents to state its side of the story. This is an important professional requirement in journalism to satisfy the principles of objectivity, balance and fairness in reporting.

FOI Laws are designed essentially as a check against corruption and to hold public authorities accountable to citizens.

By systematically using the FOI Act to target certain types of information and materials, the media and individual journalists can help to reveal corruption, abuse of public trust, abuse of power or other wrongdoings. Ultimately, this can help to push back on corruption and improve accountability.

FOI requests can be used to find out whether public authorities/officials and private bodies covered by the Act are com-

plying with or enforcing applicable rules, standards, regulations, codes, etc. This is particularly relevant for regulatory bodies and agencies.

### **What is Campaign Finance?**

Wikipedia defines Campaign finance as “all funds raised to promote candidates, political parties, or policy initiatives and referenda”. It adds that “political parties, charitable organizations, and political action committees (in the United States) are vehicles used in aggregating funds to keep campaigns alive.”

In Nigeria, political parties and candidates raise monies in a variety of ways, including donations, fund raising dinners, etc.

### **Why Should Journalists Concern Themselves with Campaign Finances?**

Elections are meant to produce leaders by popular vote of the people. Money politics endanger popular choice as it may sway voters to vote for candidates and parties that spend the highest amount of money to woo voters and, ultimately, elections are bought by the highest spenders.

There is the likelihood that elected officials will cater to the whims and caprices of their big donors, individuals and corporate organisations, than to the majority of the populace.

The big donors and their firms are also likely to get government patronage and the big chunk of government contracts, to the detriment of other competitors.

There are laws and regulations that guide how political parties and candidates can raise money for their activities and, if not for anything, the laws and regulations need to be obeyed by all to ensure a level playing field for contestants. Journalists are best placed to bring breaches of the relevant laws and regulations to the knowledge of the public.

### **Laws and Policies Regulating Political Finances**

Several Nigerian laws and policies regulate political party funding as well as campaign finances, including who can and cannot donate/contribute to political campaign finances; as well as set the limit of what parties and candidates can spend for political campaigns.

Sections 221 to 229 of the 1999 Constitution (as amended) regulate the activities of political parties, while Section 225 specifically deals with finances of political parties.

Other laws and regulations that are also relevant to regulating political/campaign finances are the Electoral Act and its various amendments, the Companies and Allied Matters Act, and INEC Guidelines and Regulations for Political Parties, 2013.

There are a number of such regulatory bodies and agencies in Nigeria, but the most prominent and most important among them all is the Independent National Electoral Commission (INEC).

## **How The Media Can Use, The FOI Act**

Journalists need to know and be conversant with the following information which can aid them to frame the right questions that will elicit relevant information about party funding and campaign finances:

1. Provisions of the law that regulate party funding and campaign finances;
2. The legally approved sources of funding for political parties and campaigns in Nigeria;
3. Sources of funding allowed for political parties and campaigns;
4. Sources of funding prohibited from political campaign finances.
5. Who is prohibited from donating to political parties and candidates?
6. What are the spending limits for the different positions being contested?
7. What constitute offences in the law(s) regulating campaign financing?
8. Are there gaps in the regulations?
9. What are the penalties for the various offences of breaching campaign financing?
10. Which agencies of government regulate campaign finances?
11. How are these agencies supposed to regulate campaign finances?
12. Are they doing their assigned roles in ensuring compliance with monitoring and regulating campaign finances?
13. What have the agencies done or what are they doing when the law is broken by a political party or candidate?
14. When parties and candidates publicly raise money, how much do they realise?
15. What is the difference between what is realized and what the law sets as

limit?

16. When they publicly raise money, do part or all of such monies come from sources that the law prohibits?

17. How does a journalist track parties' and candidates' campaign finances?

18. Where does a journalist get information on parties' and candidates' campaign finances?

Journalists' mandates could cover areas such as:

- Conducting periodic audits of party and campaign finances, including sources and spending
- Publication of the audits reports of party and campaign finances
- Determining actions taken for breach of relevant laws regulating party and campaign financing
- Compelling relevant agencies to take necessary steps where the set limit to party finances, in terms of receipt and expenditures, is being breached.

## **Information That Can Be Requested Under The FOI Act**

FOI requests can be made for a variety of information relating to party and campaign finances, including, but not limited, to the following:

- Journalists can request whether the Independent National Electoral Commission (INEC) has designed the form with which political parties should submit detailed annual statements and analyses of their sources of funds and other assets, and their expenditures.

- They can request for information pertaining to submissions to INEC of detailed annual statement and analysis of their sources of funds and other assets, together with a similar statement of their expenditure in such form as they may require, in accordance with the Constitution.

Journalists can request for information that can help them determine whether political parties and candidates are receiving funds and other assets from outside Nigeria; and if they do, whether they are paying or transferring them to INEC, as required by the Constitution.

The media can request for copies of the directions INEC has given political parties regarding their books or records of financial transactions which the Constitution requires them to keep, and whether INEC

examines all such books and records.

The Constitution mandates INEC to prepare and submit annually to the National Assembly a report of the accounts and balance sheet of every political party; a journalist can request for copies of such report to help him/her determine whether the Commission is complying with its obligations concerning campaign finances.

Such information, if obtained, can be used to establish patterns of behaviour, breaches, etc.

In order for journalists to be able to request relevant information from relevant agencies, they need to do their research and have answers to certain questions that are relevant to party funding and campaign finances.



## CHAPTER FOUR

# Making Requests For Information Under The Freedom Of Information Act

### Who Can Request for Information?

Both organizations and individuals can request information pursuant to the FOI Act. Under the Act, “every person” has a right of access to records, documents and information held by public institutions. This right applies to legal (corporate bodies) and natural persons. This means that requests for information can be made either in the name of the journalist or journalists investigating the issue, or in the name of the media organizations he or she or they work for. In deciding what approach to adopt, the media organization and the journalists would have to make a systematic assessment of which approach is likely to be more effective and whether there are other strategic issues that need to be taken into account. For instance, if a story may be too politically sensitive and having a specific reporter submit the request for information could expose that reporter to attack or other pressure, it might be more strategic to make the request in the name of the media organization.

### What Type of Information Can be requested?

Under the FOI Act, all kinds of information can be accessed. These include all re-

ords, documents or information stored in whatever form, including written, electronic, visual images, sound, audio recording, etc. They can all be accessed, unless the information is specifically exempted by the Act. An applicant may therefore apply for any of the following:

- Paper records in the form of any written material such as books, files, letters, papers, diaries, forms, labels, cards, a notebook, computer print-outs, or any other writing.
- Electronic records, including information contained in or recorded or stored in any computer, disk, external drive, server, database, or any other device. These include emails, text messages, etc.
- Audio recordings contained in, recorded or stored in any tape, CD, DVD, computer, external drive, disk, voicemail, or any other device.
- Audio-visual records, including films, documentaries and similar materials contained in, recorded or stored in any tape, video, DVD, CD, computer, disk, external drive, server, or any other device.
- Photographs and graphics, including maps, plans, drawings, x-rays, negatives, charts, graphs, images, pictures,

artworks, sketches, or other visual images.

### **Which Public Institution can be Approached for Information?**

Information can be requested from any public institution in Nigeria or private institutions utilising public funds, performing public functions or private institutions in which the government has a controlling share, as long as:

- The institution has custody of the information.
- The information, record or document was prepared or created by the institution.
- The record has been used by the institution.
- The record is being used by the institution.
- The record has been received by the institution.
- The record is in the possession or custody of the institution.
- The record is under the control of the institution.

### **How to Request for Information**

The FOI Act does not specify the details that an applicant should supply in an application for information and no guidelines or templates or application forms have been issued by the Attorney General of the Federation (AGF) and Minister of Justice or by public institutions for members of the public in order to guide applicants requesting information.

Therefore, generally, the application for information should be addressed and sent to the FOI Officer of the public institution, who is the person designated by the public institution under the Act to receive such

requests from the public. This is because, according to the AGF Implementation Guidelines, “effective implementation of the act requires each public Institution to designate a senior official (of at least Assistant Director level or its equivalent) as the head of (an) FOIA Unit.” The Unit should be responsible for making decisions on FOI requests and generally ensuring compliance through the adoption of institutional best practices.

However, even if the institution has not designated an FOI Officer or the title and address of such officer has not been publicised, this does not affect the applicant’s right of access to information. Where there is no known FOI Officer of the institution, the application can be directed to the head of the institution.

### **Mentioning the FOI Act in the Application**

When requesting any information, record or document, it is important for the applicant to state clearly in the application that he or she is applying under the FOI Act. An application is still a valid request even if this is not stated in the application.

But by stating clearly that he or she is applying under the FOI Act, the applicant removes any room for doubt in the event of any dispute later on. This is important for a number of reasons, including the fact that:

- Section 30(2) of the FOI Act provides that: “Where the question whether any public record or information is to be made available, where that question arises under this Act, the question shall be determined in accordance with the provision stated herein, unless otherwise exempted

by this Act.” By making it clear that the information is being applied for under the FOI Act, any dispute over the applicant’s right of access to information will have to be resolved in accordance with the provisions of the FOI Act.

- There are other laws such as the Public Procurement Act, 2007, the Nigerian Extractive Industries Transparency Initiative (NEITI) Act, 2007, etc, which also have clauses on the disclosure of information but their procedures and enforcement mechanism are not as clear and as strong as those provided in the FOI Act. The FOI Act gives an applicant a stronger right of access to information than these other laws that an applicant may also use to apply for some types of information. By stating that the information is being applied for under the FOI Act, the applicant can take advantage of the strong enforcement mechanism and sanctions for wrongful denial of access under the FOI Act.

- The FOI Act is explicitly made superior to secrecy laws such as the Official Secrets Act, the Criminal Code, the Penal Code, the Federal Public Service Rules, etc. These other laws can therefore not be used to withhold information from an applicant when it is made under the FOI Act. By mentioning that the information is being applied for under the FOI Act, the public officials dealing with the applicant’s requests are reminded that they have to take this fact into account and deal with the application much more seriously.

### **Content of the Application**

Full Address: An application for informa-

tion, records or documents should include the name, address and other contact details of the applicant, as would be included in any normal official correspondence.

**Simplicity:** The request for information should be simple and straightforward. Being simple and clear in the description of the application makes it easier for the public institution to find it and the more difficult it will be for the public institution to evade the request.

**Precision:** The applicant should ensure that the information being requested is as specific as possible. He or she should avoid making requests that are too broad or general such as “I request all the information, records and documents you have on waste disposal in the State.” The applicant should describe the information, record or document that is being applied for as clearly and as precisely as possible.

**Details:** When making the request, it is advisable that the application should contain sufficient detail to enable the public institution identify the record, document or information being applied for. This will increase the likelihood of the applicant being able to get the information, record or document requested.

The applicant should include in the application any information he or she has that may make the document, record or information that he or she is requesting easier to locate. The applicant should include any, some or all of the following, if he or she has the information and where applicable:

- The title of the document or record.
- The date on which the document or record was issued or made.



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- The reference number of the document, if any.
- The name of the author of the document, if any.
- The file number of the record, if any.

Emphasis on seven (7) days: It is advisable that the applicant also indicates in the application that he or she expects to receive the information, record or document promptly, but in any case no later than the seven (7) days provided by the law.

Form of information or record: The applicant should indicate in the application the form in which he or she would like to be given access to the information, record or document requested. The applicant can indicate whether he or she wants to be given photocopies or printouts or electronic copies by email or in a disk.

### **Justification for the Request**

The applicant should always remember that he or she does not have to give any reason or explanation for requesting any information, record or document. The applicant does not have to show that the document, record or information affects him or her or concerns him or her or is in any way connected to him or her.

The applicant has a right to apply for any information that is not exempted under the FOI Act without having to demonstrate an interest in the information.

### **Fees for Access to Information**

Access to records and documents under the Act is not free and fees may be charged. However, the Act provides that the fees that can be charged are limited to standard

charges for the duplication of documents and for transcription, where necessary. No other form of fees can be charged under the FOI Act.

According to the Implementation Guidelines issued by the Attorney-General of the Federation, the FOI Act “does not authorize the imposition of an administrative fee to cover the manpower costs of researching and collating requested information.”

Indeed, in order to standardize fees across all public institutions, the Attorney-General of the Federation has established a fee schedule for accessing information under the FOI Act. The fees are contained in the revised Guidelines on the Implementation of the FOI Act issued by the Attorney-General.

The fee schedule is titled: “Range of Fees Chargeable for Duplication of Records under the FOIA 2011”. Under the schedule, the Attorney-General of the Federation indicates the following charges:

The cost of photocopying records or documents is a maximum of N10 per page. The cost of scanning and printing documents is a maximum of N10 per page.

There is no charge for simply scanning a record and saving it to a file in a storage device, if the applicant is not asking for hard copies.

The cost of copying information to a compact Disc, where the CD is provided by the public institution is a maximum of N100 per CD.

The cost of copying information to USB drives, where the USB drive is provided by the public institution, is N1,500 for a USB of 1GB or less.

The cost of copying information to USB

drives of between 1GB and 2.5 GB is N2,500, where the drive is provided by the public institution.

The charge for copying information to USB drives of more than 2.5GB capacity is N5,000 per USB drive provided by the public institution.

The Guidelines state that where the cost of copying or transcription is negligible, the information may be provided to the applicant free.

It also stipulates that where it will cost the same or more to collect the fees than the amount being collected, the information may be given to the applicant free.

Therefore, an applicant who is charged fees should ensure that they are consistent with the fee schedule stipulated by the Attorney-General of the Federation.

### **Types of Responses**

An applicant should expect to receive one of several different types of responses from a public institution to which he or she has applied for information. The institution may decide to give the applicant the information requested, in which case it should ordinarily do so within seven days.

However, the institution may decide to deny the application. In such a case, the institution should give the applicant a written notice that access to the information or part of it will not be granted.

The notice should contain the reasons for the denial and the section or sections of the Act which the institution is relying on to deny the applicant the information.

Where the application is refused, the notice should state that the applicant has a right to challenge the refusal in Court.

The notice should contain the names, designation and signature of every person

responsible for the refusal. The institution must also indicate in the notice whether the information or record applied for actually exists.

Where the institution fails to give the applicant the information applied for within the time limit set in the Act or simply ignores the applicant, the institution is deemed to have refused to give the applicant access.

### **Time frame for Responses**

A public institution is required to respond to an applicant for information, including possibly providing the information or record requested within seven days. Where this is not possible, the applicant ought to be notified and given the reason for the delay. The reason should be consistent with the circumstances outlined in the FOI Act. Section 4 of the Act stipulates how much time a request for information made under the Act will entail. Public institution must respond to an applicant for information, including possibly providing the information or record requested within seven days.

There are only two circumstances under which this period may be extended, and they are:

- If the application is for a large number of records and meeting the original time limit would unreasonably interfere with the operations of the institution;
- If consultations necessary to comply with the application cannot be reasonably completed within the original time limit.

Regardless, the extension can only be for not more than an additional seven days, and under such circumstances, the institution must notify the applicant of the ex-

tension, and reasons for the extension.

### **Tracking and Following-Up**

The applicant should follow-up on his or her request for information by tracking the status of the request. The Attorney-General of the Federation and Minister of Justice has directed each public institution to assign a tracking number to each request and give the tracking number to the person making the request. The applicant should therefore ensure that he or she asks for and obtains a tracking number for the

application to enable follow-up.

The Attorney-General of the Federation has also directed that each public institution should establish a telephone line or Internet service that persons requesting information under the Act may use to inquire about the status of their requests. The applicant should therefore make sure that he or she asks for and obtains the telephone number or internet or email address through which he or she can enquire about the status of the request.



## CHAPTER FIVE

# Ethics and Professionalism in the Use of the FOI Act

### Introduction

Although the FOI Act now enables media practitioners, like other members of the society, to get information from public and private institutions covered by the Act; regardless of the fact that a piece of information may have been obtained through the FOI Act, journalists have a duty to comply with their professional Code of Ethics in using that information.

In addition, journalists remain bound by other Laws which are not in conflict with the FOI Act.

Prior to the enactment of the FOI Act, some of the excesses of the media, particularly inaccuracies, were often excused because of the challenges of obtaining information. The public and the authorities, particularly the courts, are likely to be less tolerant of such lapses now that there is a framework through which the media can get authentic information and verify facts. The media is now likely to be held to higher standards of conduct and stricter compliance with ethical and legal requirements.

Media practitioners must hold themselves to those standards and strive to live up to them. The ethical standards are contained in the Code of Ethics for Nigerian Journalists. The legal requirements remain in many laws, including the Criminal Code, the Penal Code, etc.

### Relevant Provisions of the Code of Ethics for Nigerian Journalists

Provisions of the Code which remain very relevant in this context include:

The Preamble: “Journalism entails a high degree of public trust. To earn and maintain this trust, it is morally imperative for every journalist and every news medium to observe the highest professional and ethical standards. In the exercise of these duties, a journalist should always have a healthy regard for the public interest.”

Trust is the cornerstone of journalism and every journalist should strive diligently to ascertain the truth of every event.

Article. 2: Accuracy and Fairness

(i) The public has a right to know. Factual, accurate, balanced and fair reporting is the ultimate objective of good journalism and the basis of earning public trust and confidence.

(ii) A journalist should refrain from publishing inaccurate and misleading information. Where such information has been inadvertently published, prompt correction should be made. A journalist must hold the right of reply as a cardinal rule of practice.

(iii) In the course of his duties a journalist should strive to separate facts from conjecture and comment.

### **Article 3: Privacy**

As a general rule, a journalist should respect the privacy of individuals and their families unless it affects public interest.

A. Information on the private life of an individual or his family should only be published if it impinges on public interest.

B. Publishing of such information about an individual as mentioned above should be deemed justifiable only if it is directed at:

- (I) Exposing crime or serious misdemeanour;
- (ii) Exposing anti-social conduct;
- (iii) Protecting public health, morality and safety;
- (iv) Preventing the public from being misled by some statement or action of the individual concerned.

### **Article 7: Reward and Gratification**

- (i) A journalist should neither solicit nor accept bribe, gratification or patronage to suppress or publish information.
- (ii) To demand payment for the publication of news is inimical to the notion of news as a fair, accurate, unbiased and factual report of an event.

### **Article 10: Access to Information**

A journalist should strive to employ open and honest means in the gathering of information. Exceptional methods may be employed only when the public interest is at stake.

### **Article 13: Plagiarism**

A journalist should not copy wholesale or in part, other people's work, without attribution and / or consent.

### **Article 14: Copyright**

- (i) Where a journalist reproduces a work, be it in print, broadcast, artwork or design, proper acknowledgement should be accorded the author.
- (ii) A journalist should abide by all rules of copyright, established by national and international laws and conventions.

### **Article 15: Press Freedom and Responsibility**

A journalist should strive at all times to enhance press freedom and responsibility.



## Privacy Issues

The Code of Ethics provides that a journalist should respect the privacy of individuals and their families unless there is public interest involved.

Similarly, the FOI Act exempts personal information from public access, unless there is an overriding public interest in the disclosure. It is important to note that in many respects, the provisions of the Code of Ethics for Nigerian journalists are consistent with the underlying philosophy of the FOI Act.

Public authorities and institutions hold a lot of information, records and documents about the private lives of individuals in and out of public office. Those records, documents and information are exempted from access under the FOI Act. They can only be disclosed under any one of three circumstances, namely:

- Where the individual to whom it relates consents to the disclosure (Section 14(2)(a));
- Where the information is already publicly available (Section 14(2)(b));
- Where the disclosure of the information clearly outweighs the protection of the privacy of the individual (Section 14(3)).

These conditions can also serve as a guide to journalists in deciding whether to go after or publish personal information.

## Types of Personal Information Exempted from Public Access under the FOI Act

The types of personal information exempted from public access include:

Materials that contain personal information, including files and personal information about clients, patients, residents, students, or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from public institutions;

Personnel files and information about employees, appointees or elected officials of any public institution or applicants for such positions;

Files and personal information maintained about any applicant, registrant or license by any public institution cooperating with or engaged in professional or occupational registration, or discipline;

Information required of any tax payer for the assessment or collection of any tax unless disclosure is otherwise required by Law; and

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 (Section 14(1)).

In addition to these, Section 37 of the 1999 Constitution (as amended) also protects

the right to privacy and family life in the following terms: “The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.”

Journalists should respect these guarantees of privacy even in their use of the FOI Act.

### **Balance, Accuracy and Fairness**

The FOI Act also does not free the journalist from the duty to rigorously check and verify the facts of a story. In addition, even where records or documents have been obtained with the FOI Act, in all probability the reporter may still need to conduct some interviews.

Since the records or documents may not be sufficient to tell the whole story, interviews will be very important for:

- Explaining any technical data or information contained in the records or documents received.
- Cross-checking any suspicious or curious facts or statements in the documents;
- Filling any gap in the information which are not explained by the documents;
- Getting expert or personal opinions on the facts or statements contained in the documents or records.

Equally important is the need to give an opportunity to any person or institution that has been indicted or negatively portrayed in the documents to state its side of

the story. This is an important professional requirement in journalism, to satisfy the principles of objectivity, balance and fairness in reporting.

This requirement would most likely be best satisfied by interviewing such parties.

### **Legal Requirements**

Besides the ethical standards in the journalism profession, many laws also punish the misuse or abuse of information. These include civil defamation, criminal defamation, false publication, etc.

The fact that a journalist obtains a piece of information through the FOI Act will not protect the journalist from the consequences of improper use of the information, if the person does not take appropriate care.

### **Civil Defamation**

Media practitioners and organizations should be aware that they can be sued for defamation or libel as a result of any information they publish. Regardless of how a piece of information is obtained, the primary responsibility for its publication lies with the person or institution publishing it, in this case, the media organization.

Unless a piece of information is covered by absolute or qualified privilege, media organizations need to take care not to publish defamatory materials, unless they can prove the truth of the content.

Damages for defamation can be massive and have been known to destroy some media organizations.

### **Criminal Defamation**

Besides civil defamation, Criminal Defamation is an offence at the Federal level as well as in most states in the country. It is extensively covered in the Criminal Code Act in the Laws of the Federation of Nigeria. It is also separately provided for in the Defamatory and Offensive Publications Act, also contained in the Laws of the Federation of Nigeria.

Section 375 of the Criminal Code Act on “Publication of defamatory matter” stipulates that: “Subject to the provisions of this Chapter, any person who publishes any defamatory matter is guilty of a misdemeanour, and is liable to imprisonment for one year; and any person who publishes any defamatory matter knowing it to be false is liable to imprisonment for two years.”

One of the fears expressed about the possible abuse of the FOI Act is that journalists might use the Law to obtain damaging information about people and then use the information improperly in an effort to extort money or other favours from the person that the information concerns.

It is important that media practitioners who may be so minded are aware of the dangers of such a practice. Section 376 of the Criminal Code Act on “Publishing defamatory matter with intent to extort” provides that: “Any person who publishes,

or threatens to publish, or offers to abstain from publishing, or offers to prevent the publication of defamatory matter, with intent to extort money or other property, or with intent to induce any person to give, confer, procure, or attempt to procure, to, upon, or for, any person, any property or benefit of any kind, is guilty of a felony, and is liable to imprisonment for seven years.”

Defamatory matter is defined under Section 373 of the Criminal Code Act as follows:

“Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt, or ridicule, or likely to damage any person in his profession or trade by any injury to his reputation.”

The Act goes on to say that: “Such matter may be expressed in spoken words or in any audible sounds, or in words legibly marked on any substance whatever, or by any sign or object signifying such matter otherwise than by words, and may be expressed either directly or by insinuation or irony.

“It is immaterial whether at the time of the publication of the defamatory matter, the person concerning whom such matter is published is living or dead ...”

### **Handling of FOI Information**

It is therefore imperative that even if a record, document or other type of information is obtained under the FOI Act, the use of that information should be in

accordance with the highest standards of journalism.

### **False Publication**

If a journalist fails to verify the content of the information and it turns out to be false, it could come back to haunt him or her!

Section 59 (1) of the Criminal Code Act provides that: “Any person who publishes or reproduces any statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing or having reason to believe that such statement, rumour or report is false shall be guilty of a misdemeanour and liable, on conviction, to imprisonment for three years.”

The Act goes on to say in Section 59(2) that: “It shall be no defence to a charge under the last preceding subsection that he did not know or did not have reason to be-

lieve that the statement, rumour or report was false unless he proves that, prior to publication, he took reasonable measures to verify the accuracy of such statement, rumour or report.”

Similarly, Section 418 of the Penal Code, applicable in the northern states, provides that: “Whoever circulates, publishes or reproduces any statement, rumour or report which he knows or has reason to believe to be false with intent to cause or which is likely to cause fear or alarm to the public whereby any person may be induced to commit an offence against the public peace, shall be punished with imprisonment which may extend to three years or with fine or with both.”

So while the Freedom of Information Act is a powerful tool that journalists now have in their toolkits, they must refrain from abusing the Law or misusing it.

## CHAPTER SIX

### Writing the Story

**T**he core task of an investigative reporter is to use the heap of information available to him/her to write a story that will cover all angles in an interesting and attention-grabbing manner.

The crust of the matter goes beyond the actual writing. It takes in the rudimentary stage of researching the relevant materials, the actual writing (taking all sides/angles into consideration), the need for quality control (legal and ethical) and finally the publication of the story.

A painstaking focus of this method will ensure that the reporter achieves the zenith in terms of the standard of the best practices of journalism.

This is also a sure way to bring out the special skill required for investigative journalism as against the run-of-the-mill practice of journalism which has become routine and rather mundane.

Investigative journalism as is being envisaged here, embraces the culture of quality, a glaring departure from the quantity that signposts the reporting of routine stories. Basically, the quality of investigative reporting shows a high level of in-depth appraisal and news management through the careful sifting of different sources of information, paying due attention to details, utilizing time in a way that tasks patience and a dependable level of impartial appraisal of events and situations.

While it is true, in a way, that no single story is worth the life of a journalist, the investiga-

tive journalist, by honing his nose for news behind the news, has to go the extra mile to verify a story. In fact, he/she epitomizes the indignant claim that “to be a journalist is to look for trouble”. He/she must “calculate the risks” involved before plunging headlong into working on the story.

#### The “How and “Why” of Investigative Journalism

In finding and providing answers to the “how and why” of events and situations, the investigative journalist has to tread carefully on the borders of ethics and illegality to get salient information. Investigative journalism means you put your best efforts and use open, confidential and secret documents to prepare and write a story that will eventually become a scoop, exclusive to you and the organization you represent. Cultivating a deep friendship with messengers, secretaries who have access to physical documents in the office environment also helps the innovative investigative journalist.

If it is done well, the credibility goes to the individual and the organization he represents. But there are delicate aspects to writing stories in an investigative manner. Writing stories on corruption, kidnapping, etc., will undoubtedly bring the journalist close to criminally-minded individuals, and utmost caution needs to be taken to protect life and limb. The boldness of the investigative journalist at this stage is a key factor. Another factor is the support he gets from

his organization in the ensuing threats and “attacks” from those he is “investigating” in the course of pursuing the story.

Getting the story is a primary task meant basically to inform the public about a development concerning a prominent individual or an organization. It is usually in the public interest and not for selfish reasons.

Unlike conventional journalism which reels out bland, routine stories regularly for public consumption, investigative journalism takes it deeper and the questions are more probing, an indication that the reporter must have dug beyond the surface while doing the story. The way and manner the elements of writing a story viz the “why, when, what, who and how” are tackled by the investigative journalist will differ from the way a conventional journalist will. This is where the skills of a dogged, unwavering and determined reporter comes into play. Though, as the claim goes, no story is worth the life of a journalist, a determined reporter will stake anything to get a scoop.

### Writing Style

**Tapping your imagination:** It takes a lot of creative effort to wield facts not known to the public in a manner that will keep those interested glued to the story. Sustaining the suspense takes a lot of creativity. It is a skill. **Precision:** Apart from being imaginative, there is the need to be precise in your presentation of facts as the story progresses. Being precise keeps the interest and ensures credibility of the story and the writer.

**Objectivity:** Facts always remain sacred. By stating the facts as they actually happened lends credence to the story. Once all sides are fairly represented, the tendency is that it enhances credibility.

**Experience counts:** You can always fall back on the experience of conventional journalism to chart through the rugged waters of investigative journalism. The investigative journalist must stay the course and be dogged in the pursuit of the story, even when the odds are stacked against him/her.

**Language Use:** In investigative journalism, it is imperative that the reporter is more conscious of proper language use than conventional journalists. The reporter must avoid words and phrases that expose any interest, sentiment, judgemental slurs, and other traits that express disgust, dismay, indignation or any positive or negative emotional attachment towards individuals or organizations in the story.

### Appendix 1: List of Relevant Public Institutions

- Independent National Electoral Commission (INEC)
- Independent National Electoral Commission (State Offices)
- Electoral Offences Commission (EOC)
- National Orientation Agency (NOA)
- Political Parties
- The Media
- The Judiciary
- Economic and Financial Crimes Commission (EFCC)
- Independent Corrupt Practices Commission (ICPC)
- The Nigerian Police
- The Nigerian Army
- Directorate of State Security/ State Security Service (DSS/SSS)
- Nigerian Security and Civil Defence Corps (NSCDC)



