
HOW TO GUIDE

RULE OF LAW AND ANTI-CORRUPTION IN NIGERIA

**How to improve
transparency
at the state
level with the
Freedom of
Information Act**



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WHAT IS THE ROLAC 'HOW TO' SERIES?

The guide is part of a series of products developed by ROLAC to communicate lessons learned from projects and pilots, to provide stakeholders with guidance on how to adapt and replicate the initiative in their own context.

The full series can be downloaded from www.justice-security.ng

WHO IS THIS 'HOW TO' GUIDE FOR?

Influencers and decision makers especially at sub-national levels in Nigeria (State Executive Councils, State Houses of Assembly, Ministries, Departments and Agencies (MDAs), the Judiciary, Local Government Councils, and Civil Society).

THE PROBLEM

- Corruption is known to thrive on opacity. Transparency and accountability are therefore best achieved when citizens have unfettered access to public records and information.
- The Freedom of Information (FoI) Act promotes access to information and enhances citizens' capacity to demand accountability.
- A 2018 FoI Implementation Assessment revealed low knowledge and use of the Act by non-state actors. Only 17 per cent were aware of the legislation and just 11 per cent knew how to use it.
- Compliance by public institutions with the provisions of the Act has been low. It is especially low in the states as many are still grappling with setting up the FoI framework.

“ In a democratic dispensation such as Nigeria, the citizens have been proclaimed the owners of sovereignty and mandate that place leaders in the saddle. The citizens have a right to know details of expenditure of public funds generated from their taxes. ”

Justice Ogbuinya, Court of Appeal, delivering judgement in the case of Alo vs Speaker, Ondo State House of Assembly

BACKGROUND

- The Official Secrets Act was enacted in 1911 and prohibits persons from transmitting, obtaining or reproducing information from government agencies.
- Government officials have routinely denied citizens access to government records under the guise that such records are classified and secret.
- The FoI Act was enacted in 2011 to give a person, group, association or organisation the right to access information from government agencies and private sector organisations providing public services. An Appeal Court decision affirmed that the law is also applicable to states.
- However, there has been poor utilisation of the Act by non-state actors and low level of compliance by public institutions, arising from a lack of knowledge and capacity. This is at both national and sub-national levels. Consequently, the expected impact of the FOI on the fight against corruption is not being felt.

WHAT YOU CAN DO

- Support the development of standard FoI implementation tools to provide clarity on procedural and process implementation steps for the FoI Act.
- Raise awareness amongst personnel of state institutions, civil society organisations and citizens on the benefits of the FoI Act towards strengthening responsive and transparent governance at all levels.
- Build the capacity of critical personnel including political office holders, management and technical personnel of state institutions, civil society, and professional bodies - such as the Nigerian Bar Association and the Nigerian Union of Journalists - on procedural measures and tools to implement the FoI Act. Journalists should also be trained on investigative journalism.
- Support the enforcement of rights established by the FoI Act by encouraging legal redress when violated or contravened.
- Build a strong stakeholder base that will engage relevant federal and state authorities towards ensuring that state FoI laws and subsidiary instruments are enacted and resources for implementation are provided.

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Advocacies and sensitisations awoke the slumbering masses to the reality that the institutionalization of an FoI regime in Kano State will strengthen due process and responsiveness in government affairs. ”

Bako Umar, Member, FoI Coalition, Kano State Chapter

“

RoLAC capacity building support for FoI Desk Officers in federal institutions have stimulated and enhanced compliance to the FoI Act 2011, as more institutions proactively upload information and records for public access, and avail the inquiring citizens information and records sought timeously. ”

Rose Dakum, FoI Desk Officer, Federal Ministry of Information, Abuja

WHAT YOU CAN ACHIEVE

The implementation of provisions of the FoI Act will:

- Enhance the knowledge of state and non-state actors on their duties and obligations under the FoI Act and build skills on how to use it. This will lead to increased compliance with the law with more state institutions responding to FoI requests and submission of their annual compliance reports.
 - Enhance citizens demand for accountability and transparency from public institutions by providing them with tools to effectively cross-check assertions by government officials, including correlating public services and spending. This will reduce
- corruption in government and promote the delivery of public services. For example, a whistle blowing event on financial malfeasance at the Kano State Health Management Board was followed by an FOI request, which led to the uncovering of N14m misappropriation in the hospitals revolving drugs fund account.
 - Increase citizens' participation in governance through the availability of detailed information and explanations of the actions of government officials.
 - Promote openness and transparency in governance by enabling citizens to have access to records of what is being done on their behalf.



HOW TO ENHANCE FOI ACT IMPLEMENTATION

You can follow these steps to implement the FOI Act in your state

STEP 1 Set up implementation structures

1

The Ministry of Justice (MoJ) should lead and champion the implementation of the FOI law in the state. They should ensure that structures for implementation are set up across all public institutions. This will include FOI Units in the MoJ and FOI Desks and Officers in all government institutions.

STEP 2 Develop and issue relevant implementation tools pursuant to FOI legislation

2

Guidelines, tools, templates simplify the process for utilizing the law for citizens and institutions. In the FOI Act, the issuance of guidelines and other implementation tools are vested on the Attorney-General and Minister of Justice. At state level, it is expected that the MoJ will collaborate with relevant civil society organizations to develop these tools. Examples of tools include Guidelines on the Implementation of the Freedom of Information Act, the FOI Proactive Disclosure Protocol; FOI Compliance Monitoring Template; Samples of FOI Requests; and the Acceptable Responses to FOI requests among others. Tools issued by the Attorney General of the Federation can be obtained from the Federal Ministry of Justice and adopted by states.

STEP 3 Sensitise and advocate

3

Citizens and public service personnel must be aware of the overarching benefits of the FOI law towards mitigating corruption, enthrone good governance and enhanced citizen participation in governance. Government should liaise with civil society organizations for this purpose. They should also be made aware of the credibility it will bring to their individual organizations. This will increase acceptance and buy-in of stakeholders for the implementation of the law.

STEP 4 Build the capacity of relevant state and non-state stakeholders

4

Section 13 of the FOI Act prioritizes training and stipulates that all public institutions should make provisions for the training of its personnel. A

bespoke training curriculum could be developed following a capacity needs assessment of relevant public officials. Training should include basics and fundamentals as well as technical and advanced aspects of FOI legislation. Subject matters like Rights to Access to Information, How to Develop FOI Requests, Procedures for Responses to FOI Requests, Proactive Disclosures by Public Institutions, Judicial Reviews under the FOI Laws may be included.

STEP 5 Incentivise public institutions towards enhanced compliance

5

The Ministry of Justice may initiate an FOI Compliance Rating Scheme to enhance compliance competitiveness amongst public institutions. Annual compliance reports and court judgments can form the basis for ratings. High performing institutions may be symbolically honoured and serve as models for other institutions to emulate.

STEP 6 Enforce the provisions of the legislation

6

The Attorney-General and Commissioner for Justice should ensure strict compliance and enforcement of the provisions of FOI Act. All reports required from MDAs should be submitted to the ministry within the timelines in the Act and in accordance with standard templates issued. Sanctions should be meted out to defaulting MDAs as provided for in the Act and other implementing tools.

STEP 7 Enforce court judgements arising from FOI issues

7

The Attorney-General should ensure the strict enforcement of court judgments obtained against defaulting public institutions. Other administrative sanctions may be taken against frequent defaulters, especially those with several judgments against them, to serve as a deterrent for others.

IMPLEMENTING PARTNERS

Office of the Secretary to the State Government

Interfaces with the Ministry of Justice and presents a memo to the state Executive Council for the implementation of the FoI Act in the state.

Office of the Head of Service

Issues a circular for the implementation of the FoI Law across all the MDAs including the establishment of FoI Desks.

State Ministry of Justice

Prepares draft policy framework including implementation structure, tools and guidance for consideration by the state Executive Council. The ministry may propose the domestication of the law.

State MDAs

Sets up internal implementation structures such as the FoI Desk and ensures compliance to the law as may be required.

Non-State Actors (CSOs, the Media and private citizens)

Use the FoI law to make requests for information.

The Courts

Enforce/compel MDAs to comply with the provisions of the law.



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LESSONS LEARNED

Support and commitment of the political class and senior management of MDAs is essential.

The FoI Act cannot be successfully implemented without political will and buy-in of the management cadre of public institutions. High level public commitment and mainstreaming FoI initiatives in the public service is critical.

Periodic and sustained capacity building is imperative.

Positive outcomes from FoI use by non-state actors and compliance by state institutions is enhanced if persons involved have had prior training on FoI application. All stakeholders including the bench and bar, the political class (politically exposed persons), top management of public institutions, FoI desk officers, and civil society organizations should undergo periodic FoI training.

A reward system improves compliancy.

The institutionalization of rewards and recognition for compliant public institutions enhances competition among them.

Enact state FoI laws to localise implementation.

Arising from controversies surrounding the application of the federal FoI Act to the states, it is imperative that states consider enacting their own FoI laws.

Funding constraints can hamper implementation.

Insufficient funding for FoI implementation hampers effective compliance by MDAs. Budgetary allocations should be made for FoI implementation activities. Engagement and implementation support should not be left to donors and development partners.

High turnover of FoI Desk Officers can slow down implementation.

Continuous transfer of responsible/desk officers, particularly in the states, slowed down implementation in public institutions. These transfers need to be reduced to build experiential knowledge, in-house competence for knowledge transfer, sharing, and institutional memory, which enhances implementation.

Building a strong stakeholder base for FoI implementation improves implementation.

Alliances, collaboration and partnerships between government, FoI stakeholders and non-state stakeholders have proven to be crucial to the implementation of the FoI Act and related state laws.



EVALUATION

- Once the state level implementation of the Fol law commences, the Fol Desk Officer in each MDA should be mandated to maintain a record of all Fol requests received and how they were handled, including the response provided. The record should keep account of referrals to other government agencies, timelines for expected responses as well as necessary follow-up actions.
- Fol Desk Officers should prepare a report of the Fol-related activities of the MDA within the reporting period and an analysis of the status of all Fol requests received by the MDA. This report should be submitted every quarter to the Ministry of Justice Fol Unit or as provided for in the law.
- The Ministry of Justice should establish an Fol unit to receive and analyse the periodic Fol Implementation Reports from MDAs. It should convene periodic peer learning/review sessions with MDA Fol officers for improved compliance and reporting.

IMPROVEMENTS

- Adamawa and Anambra states have set up Fol Implementation Units in their Ministry of Justice and Fol Desks in some MDAs.
- Several public institutions have functional online platforms for the proactive disclosure of information, pursuant to section 2 of the Fol Act.
- Several public institutions have commenced in-house trainings for relevant staff, in compliance with section 13 of the Fol Act.
- Partnerships and coalitions are being formed at the state level to sustain momentum. In Kano, the state chapter of the Fol Coalition was inaugurated and

“ Appointment of Fol Desk Officers in ministries, departments and agencies by the Anambra State Government demonstrates its buy-in...and its determination for transparency in government business. Since then, we have received and responded to Fol requests. ”

Ebele Nnoli, Fol Desk Officer, Anambra State

- several Fol requests have been made by coalition members. Five Fol-related court cases have been filed by them against institutions that failed to respond to initial Fol requests. In Adamawa state, partnerships were formed with civil society groups and professional associations, including the Nigerian Bar Association and the Nigeria Union of Journalists to drive Fol initiatives.
- At the federal level, the Fol Unit at the Federal Ministry of Justice has adopted a Proactive Disclosure Protocol to aid public institutions.

CSOs trained on Freedom of Information Act through grants

| Number of CSOs trained in FOI | Number of CSO trained who made FOI applications | Number of Fol applications made by CSOs that were responded to by MDAs | Number of litigations pursued in cases where Fol requests ignored by govt |
|-------------------------------|---|--|---|
| 398 | 83 | 16 | 30 |

CSOs trained on investigative reporting

| Number of CSOs trained in Investigative journalism / gender reporting | Number of investigative stories by trained journalists on anti-corruption |
|---|---|
| 96 | 46 |

“

In Adamawa State, FoI was basically viewed as applicable only to federal institutions. But today, we have FoI desk officers in several state government institutions, while we, the CSOs have synergised to be the champions of FoI implementation.

”

Abba Abdullahi, Media Practitioner, Adamawa State

POLICY DEVELOPMENT

- The FoI Act does not anticipate sub-national adoption as a pre-condition for implementation. This is underscored by a Court of Appeal, Akure Division decision (see footnote 2).

RESOURCE REQUIREMENTS

Costs towards the successful implementation of the FoI Act in states include those related to:

- Engagement of consultants to develop FoI legislation and/or subsidiary legislation and/or the review and validation of such legislation.
- Setting up and running implementation structures (e.g. FoI Units and Desk Officers).
- Sensitisation and advocacy activities, including media and publicity, and set up and maintenance of portals dedicated to FoI.
- Training and other capacity building sessions for stakeholders.
- Defence of suits instituted against public institutions.

The actual cost for the implementation of the FOI Act is therefore scalable depending on whether the state is enacting their own law or adopting and applying the existing FOI Act. Another variable includes the size of the state and its MDAs.



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Rule of Law and Anti-Corruption
(RoLAC) Programme
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The Rule of Law and Anti-Corruption (RoLAC) Programme is working to strengthen the application of law and curb corruption. We work at the federal level and in five focal states: Adamawa, Anambra, Edo, Kano and Lagos.

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