

**FREEDOM OF INFORMATION BILL 2005
(SENATE VERSION)**

**A BILL TO MAKE PUBLIC RECORDS AND PUBLIC INFORMATION MORE
FREELY AVAILABLE, PROVIDE FOR PUBLIC ACCESS TO PUBLIC
RECORDS AND INFORMATION, PROTECT PUBLIC RECORDS AND
INFORMATION TO THE EXTENT CONSISTENT WITH THE PUBLIC INTEREST,
AND THE PROTECTION OF PERSONAL PRIVACY; AND TO PROTECT
SERVING PUBLIC OFFICERS FROM THE ADVERSE CONSEQUENCES OF
DISCLOSING CERTAIN CLASSES OF PUBLIC RECORDS AND INFORMATION,
WITHOUT AUTHORISATION AND TO ESTABLISH PROCEDURES FOR THE
ACHIEVEMENT OF THE FOREGOING AND ANY RELATED PURPOSES
THERETO, 2005 (SB. ?)**

Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows –

PART I

PRELIMINARY

1. This Bill shall be cited as the Freedom of Information Bill 2005.

Short Title

2. The objects of this Bill shall include –

Objects of the Bill

(1) The extension of the right of citizens of Nigeria to access to records and information held by an institution –

[a] Making available to such citizens records and information about the operations of institutions and in particular, ensuring that the rules and practices affecting citizens of Nigeria in their dealings with institutions are readily available to persons affected by such rules and practices

[b] Creating a general right of access to records and information held by institutions limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons/individuals in respect of whom such records are created or information is collected and held by such institutions, and

[c] Creating a right to bring about the amendment of records and information containing personal information that is incomplete, incorrect or misleading pursuant to the following provisions of the Constitution or any statutory modification or re-enactment of the same for the time being in force to the effect that –

- (i) the security and welfare of the people shall be the primary purpose of government
- (ii) The participation by the people in their government shall be ensured
- (iii) national unity be promoted
- (iv) national loyalty be commanded
- (v) a sense of belonging and loyalty among the peoples of the Federation be promoted
- (vi) the resources of the nation be harnessed and national prosperity and an efficient, dynamic and self reliant economy be promoted
- (vii) the national economy be controlled in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity

(2) Accordingly the provisions of this Bill shall be interpreted so as to further the objects set out in sub-section (1) and any discretion conferred by this Bill shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.

3. (1) This Bill does not apply to -
- (a) the President; or
 - [b] a commission of inquiry set up by the President
- (2) For the purposes of this Bill -
- (a) a court, or the holder of a judicial office or other office pertaining to a court in his capacity as the holder of that office, shall not be regarded as a institution; or
 - (b) a registry or other office of court administration, and the staff of such a registry or other office of court administration in their capacity as members of that staff in relation to those matters which relate to court administration, shall be regarded as part of a institution.
4. This Bill shall bind the State.
5. (1) This Bill applies to the exclusion of any provision of other legislation that prohibits or restricts the disclosure of a record by an institution.
- (2) Nothing in this Bill limits or otherwise restricts the disclosure of information pursuant to any other legislation, policy or practice
6. For purposes of this Bill,
- (1) a record includes any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the institution that holds it and whether or not it is an exempt record
 - (2) an institution holds a record if:-
 - [a] the institution holds the record, other than on behalf of another person;
 - or
 - [b] another person holds the record, on behalf of the institution.
7. (1) For purposes of this Bill, an institution includes any organisation:-
- [a] established by or under the Constitution;
 - [b] established by statute;
 - [c] which forms part of any level or branch of Government
 - [d] owned, controlled or substantially financed by funds provided by Government or the State,
 - [e] carrying out a statutory or public function or
 - [f] being a public body in which Nigerian citizens and organizations hold at least a minimum of thirty three and one third per cent of its equity
- PROVIDED that the bodies indicated in sub-section (1) (e) are public bodies only to the extent of their statutory or public functions
8. Notwithstanding any provision in this Part, an institution may not decline to indicate whether or not it holds a record, or decline to communicate information, unless the harm likely to be occasioned in granting the application far exceeds the public interest to be served in making a disclosure

Non-application of Bill

Bill to bind State

Legislation prohibiting or limiting disclosure

Records

Scope of institutions

Public interest to override

PART II

FUNDAMENTAL PRESUMPTIONS, BURDEN OF PROOF & APPEALS

9. Subject to the provisions of this Bill, a citizen of Nigeria shall be presumed to have and enjoy an absolute right of access to records and information and accordingly the burden of proof of the contrary shall rest on the institution or authority holding otherwise
10. The right of access shall be actionable
11. Any record or information shall be presumed to be severable and accordingly the burden of

Presumption of right

Right actionable

Presumption of severability

proof of the contrary shall rest on the institution or authority holding otherwise.

12. Any failure to comply with the provisions of this Bill shall amount to bad faith and the burden of proof of the contrary shall rest on the institution or authority holding otherwise

Presumption of bad faith

13.. An applicant seeking to exercise his right of access shall not be required to declare or demonstrate any specific interest in the record of his choice for which he makes an application

Non-requirement of interest

14. Any applicant aggrieved by any decision under this Bill may be brought by petition or motion ex-parte before a court of competent jurisdiction and shall be summarily determined in chambers whether on trial or otherwise.

Summary determination of issues

15. An applicant aggrieved by a decision of the lower court may appeal against it

Right of appeal to higher courts

PART III

DUTY TO PUBLISH CERTAIN INFORMATION AND RECORDS

16. (1) An institution shall cause to be published –

[a] in the *Gazette and on its website* as soon as practicable, but not later than twelve months in the case of the *Gazette*, and thirty six months in the case of the website, after the date of commencement of this Bill, a statement -

Publication of information concerning functions, etc. of institutions

(i) setting out the particulars and functions of the institution, indicating, as far as practicable, the decision-making powers and other powers affecting citizens and members of the public that are involved in those functions, and particulars of any arrangement that exists for consultation with or representations by, bodies and persons outside the administration in relation to the formulation of policy in, or the administration of, the institution;

(ii) of the categories of records that are maintained or in the possession of the institution;

(iii) setting out the approved budget of the institution including its expenditure

(iv) setting out recipients of its subsidies

(v) setting out its proposed development activities, the percentage completion of each, the constraints in the way of one hundred percent completion and when the percentage outstanding in each case is due for completion.

(vi) of the material that has been prepared by the institution under this Part for publication or inspection by members of the public, and the places at which a person may inspect or obtain that material; and

(vii) of the procedure to be followed by an applicant.

[b] during the year commencing on the first day of January next following the publication, in respect of an institution, of the statement under subparagraph (i) to (vii) of paragraph (a) that is the first statement published under that subparagraph, and during each succeeding year, cause to be published in the *Gazette and on its website* statements bringing up to date the information contained in the previous statement or statements published under that subparagraph,

and subsequent thereto in any other mode appropriate for the purpose of assisting members of the public to exercise effectively their rights under this Bill.

(2) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a record would cause that record to be an exempt record.

(3) Where an institution comes into existence on or after the date of commencement of this Bill, it shall comply with subsection (1) as soon as practicable after the date it so comes into existence.

17. (1) This section applies to records that are provided by an institution for the use of, or are used by, the institution or its officers in making decisions or recommendations, under or for the purposes of any enactment or scheme administered by the institution, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled or subject, being –

Certain records to be available for inspection and purchase

[a] manuals or other records containing interpretations, rules, guidelines, practices

or precedents including, but without limiting the generality of the foregoing, precedents in the nature of letters of advice providing information to bodies or persons outside the institution;

[b] records containing particulars of such a scheme, not being particulars contained in any other enactment; and

[c] records containing statements of the manner, or intended manner, of administration or enforcement of such an enactment or scheme, but not including records that are available to the public as published otherwise than by the institution or as published by another institution.

(2) An institution shall -

[a] cause copies of all records to which this section applies that are in use from time to time to be made available for inspection and for purchase by members of the public;

[b] not later than twelve months after the date of commencement of this Bill, cause to be published in the *Gazette and not later than thirty six months on its website*, a statement (which may take the form of an index) specifying the records of which copies are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and

[c] within twelve months after the date of first publication of the statement under paragraph (b) and thereafter at intervals of not more than twelve months, cause to be published in the *Gazette and on its website*, statements bringing up to date information contained in the previous statement or statements.

(3) An institution may not comply fully with paragraph (2)(a) before the expiration of twelve months from the date of commencement of this Bill, but shall, before that time, comply with that paragraph as far as is practicable.

(4) This section does not require a record of the kind referred to in subsection (1) containing exempt information to be made available in accordance with subsection (2), but, if such a record is not so made available, the institution shall, if practicable, cause to be prepared a corresponding record, altered only to the extent necessary to exclude the exempt information, and cause the record so prepared to be dealt with in accordance with subsection (2).

(5) Where an institution comes into existence on or after the date of commencement of this Bill, subsections (2) and (3) shall apply in relation to that institution as if the references in those subsections to the date of commencement of this Bill were references to the date the institution so comes into existence.

18. If a record required to be made available in accordance with section 16, being a record containing a rule, guideline or practice relating to a function of an institution, was not made available and included in a statement in the *Gazette and on its website*, as referred to in that section, a member of the public who was not aware of that rule, guideline or practice shall not be subjected to any prejudice by reason only of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by him if he could lawfully have avoided that prejudice had he been aware of that rule, guideline or practice.

Unpublished records
not to prejudice public

PART IV

RIGHT OF ACCESS TO INFORMATION AND RECORDS

19. Subject to this Bill, every applicant shall have an absolute right of access in accordance with this Bill, to an official record other than an exempt record.

Right of access

20. Where -

[a] a record is open to public access, as part of a public register or otherwise, in accordance with another enactment; or

[b] a record is available for purchase by the public in accordance with arrangements made by an institution, access to that record shall be obtained in accordance with that enactment or arrangement, as the case may be.

Access to certain re-
cords

<p>21. Nothing in this Bill shall prevent an institution from publishing or giving access to records (including exempt records), otherwise than as required by this Bill, where it has the discretion to do so or is required by law to do so.</p> <p>22. (1) An applicant shall apply in writing to the institution for access to a record. (2) An application shall identify the record or shall provide such information concerning the record as is reasonably necessary to enable the institution to identify the record. (3) An application may specify in which of the forms of access set out in section 29 the applicant wishes to be given access. (4) Subject to section 31, an application may be made for access to all records of a particular description that contain information of a specified kind or relate to a particular subject matter.</p> <p>23. (1) An institution shall take reasonable steps to assist any applicant who - [a] wishes to make an application under section 30; or [b] has made an application which does not comply with the requirements of subsection 30(2), to make an application in a manner which complies with that section.</p> <p>(2) Where an application in writing is made to an institution for access to a record, the institution shall not decline to comply with the application on the ground that the application does not comply with subsection 30(2), without first giving the applicant a reasonable opportunity of consultation with the institution with a view to the making of an application in a form that complies with that section.</p> <p>24. (1) Where an application is made to an institution for access to a record and the application has not been directed to the appropriate institution, the institution to which the application is made shall transfer the application to the appropriate institution and inform the applicant accordingly.</p> <p>(2) Where an application is transferred to an institution in accordance with this section, it shall be deemed to be an application made to that other institution and received on the date on which it was originally received PROVIDED that the time for responding to it shall begin to run from the date of transfer</p> <p>25. An institution shall take reasonable steps to enable an applicant to be notified of the decision on an application (including a decision for deferral of access under section 30) as soon as practicable but in any case not later than thirty days from the date on which the application was duly made.</p> <p>26. Where an application for access to a record is duly made and - [a] the application is approved by the institution; and [b] subject to section 28, any fee required to be paid before access is granted has been paid, access to the record shall be given forthwith in accordance with this Bill.</p> <p>27. (1) Where - [a] a decision is made not to grant an application on the ground that it is an exempt record; [b] it is practicable for the institution to grant access to a copy of the record with such deletions as to make the copy not qualify as an exempt record; and [c] it appears from the application, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy, the institution shall give the applicant access to such a copy of the record.</p> <p>(2) Where access is granted to a copy of a record in accordance with subsection (1), the applicant shall be informed that it is such a copy and also be informed of the provisions of this Bill by virtue of which any information deleted is exempt information.</p> <p>28. An institution may - [a] prescribe the fee to be charged by it for granting an application ; [b] prescribe the fee payable where access to a record is to be given in the form of printed copies or copies in some other form such, as on tape, disk, film or other material; [c] prescribe the manner in which any fee payable under this Bill is to be calculated and the maximum amount it shall not exceed; and</p>	<p>Access to records otherwise than under this Bill</p> <p>Applications for access</p> <p>Duty to assist applicant</p> <p>Transfer of application</p> <p>Time limit for determining applications</p> <p>Access to records</p> <p>Deletion of exempt record</p> <p>Fees</p>
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PROVIDED that applications made by organizations coming within the meaning of section 63 of this Bill shall be exempt from paying any fees

29. (1) Access to a record may be given to an applicant in one or more of the following forms:
- [a] a reasonable opportunity to inspect the record;
 - [b] provision by the institution of a copy of the record;
 - [c] delivery by the institution of a copy of the record in electronic form;
 - [d] in the case of a record that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images; or
 - [e] in the case of a record by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the authority of a written transcript of the words recorded or contained in the record.
- (2) Subject to subsection (3) and to section 27, where the applicant has preferred access in a particular form, access shall be given in that form.
- (3) If the form of access preferred by the applicant -
- [a] would interfere unreasonably with the operations of the institution; or
 - [b] would be detrimental to the preservation of the record or, having regard to the physical nature of the record, would not be appropriate; or
 - [c] would involve an infringement of copyright (other than copyright owned by the Government) subsisting in the record, access in that form may be declined and access given in another form.
30. (1) Where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices an institution which receives an application may defer the granting of access to the record concerned until the happening of a particular event (including the taking of some action required by law or some administrative action), or until the expiration of a specified time
- (2) Where the granting of access is deferred in accordance with subsection (1), the institution shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.
31. An institution dealing with an application may decline to grant access in accordance with the application, without having commenced the processing of the application, if on an objective consideration, the work involved in processing the application would substantially and unreasonably interfere with the normal operations of the institution, and if before declining to process the application on these grounds, the institution has taken reasonable steps to assist the applicant to reformulate his application so as to avoid causing such interference.
32. A decision in respect of an application made to an institution may be made, on behalf of the institution, by the chief executive officer of the institution or an authority, being an officer of the institution acting within the scope of authority exercisable by him in accordance with the arrangements approved by the chief executive officer of the institution pursuant to this Bill.
33. (1) Where a decision is made under this Part that an applicant is not entitled to access in accordance with his application or that the granting of access be deferred or that no such record exists, the institution shall cause the applicant to be given notice in writing of such decision, and the notice shall
- [a] state the findings on any material question of fact, referring to the material on which those findings were based, and the reasons for the decision;
 - [b] where the decision relates to an institution, state the name and designation of the person giving the decision;
 - [c] where the decision does not relate to an application for access to a record which if it existed, would be an exempt record but access is given to a record in accordance with section 27, state that the record is a copy of a record from which exempt information has been deleted;
 - [d] where the decision is to the effect that the record does not exist, state that a thorough and diligent search was made to locate the record; and

Forms of access

Deferral of access

Denial of access in certain cases

Decisions to be made by an authority

Reason for decision to be given

[e] inform the applicant of the right to apply to the court for a review of the decision in accordance with section 81.

(2) An institution is not required to include in a notice under subsection (1) any matter that is of such a nature that its inclusion in a record would cause that record to become an exempt record.

PART V

EXEMPT RECORDS

34. (1) A record is an exempt record if it is -

- [a] a record that has been submitted to the Executive Council for its consideration or is proposed by a Minister of Government to be so submitted, being a record that was brought into existence for the purpose of submission for consideration by the Executive Council;
- [b] an official record of any deliberation or decision of the Executive Council;
- [c] a record that is a draft of copy of, or of a part of, or contains an extract from, a record referred to in paragraph (a) or (b); or
- [d] a record the disclosure of which would involve the disclosure of any deliberation or decision of the Executive Council, other than a record by which a decision of the Executive Council was officially published.

Executive Council Records

(2) Subsection (1) does not apply to a record that contains purely statistical, technical or scientific material unless the disclosure of the record would involve the disclosure of any deliberation or decision of Executive Council.

(3) For the purposes of this Bill, a certificate signed by the Secretary to the Government or a person performing the duties of the Secretary, certifying that a record is one of a kind referred to in a paragraph of subsection (1), shall be conclusive that it is an exempt record of that kind.

(4) Where a record is a record referred to in paragraph (1)(c) or (d) by reason only of matter contained in a particular part or particular parts of the record, a certificate under subsection (3) in respect of the record shall identify that part or those parts of the record as containing the matter by reason of which the certificate is given.

(5) In this section, any reference to "Executive Council" shall be read as including a reference to a committee of the Executive Council.

35.(1) A record is an exempt record if the disclosure of the record under this Bill would prejudice the formulation or development of policy by government, by having an adverse effect on -

- [a] the free and frank provision of advice; or
- [b] the free and frank exchange of views for the purposes of deliberation.
- [c] the effectiveness of a testing or auditing policy

Formulation of Policy

(2) Where a record is a record referred to in subsection (1) by reason only of the matter contained in a particular part or particular parts of the record, an institution shall identify that part or those parts of the record that are exempt.

(3) Subsection (1) does not apply to a record in so far as it contains publicly available factual, statistical, technical or scientific material or the advice of a scientific or technical expert which analyses or gives an expert opinion of such material.

36. (1) A record is an exempt record if disclosure of the record under this Bill would be contrary to the public interest for the reason that the disclosure -

- [a] would prejudice the security, defence or external affairs of Nigeria;
- [b] would divulge any information or matter communicated in confidence by or on behalf of the Government of another country to the Government of Nigeria.

Records affecting national security, defence, and foreign affairs

(2) Where the Secretary to the Government is satisfied that the disclosure under this Bill of a record

would be contrary to the public interest by reason of the provisions of subsection (1), the Secretary to the Government may sign a certificate to that effect and such a certificate, so long as it remains in force, shall establish conclusively that the record is an exempt record referred to in subsection (1).

(3) Where the Secretary to the Government is satisfied as mentioned in subsection (2) by reason only of the matter contained in a particular part or particular parts of a record, a certificate under that subsection in respect of the record shall identify that part or those parts of the record as containing the matter by reason of which the certificate is given.

37. A record is an exempt record if its disclosure under this Bill would, or would be reasonably likely to –

Records affecting enforcement or administration of law

- [a] prejudice the investigation of a breach or possible breach of the law or the enforcement or proper administration of the law in a particular institution;
- [b] the apprehension or prosecution of offenders;
- [c] prejudice the fair trial of a person or the impartial adjudication of a particular case;
- [d] the assessment or collection of any tax or duty;
- [e] disclose, or enable a person to ascertain the identity of a confidential source of information in relation to the enforcement or administration of the law;
- [f] the operation of immigration controls; or
- [g] disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
- [h] endanger the lives or physical safety of persons engaged in or in connection with law enforcement.

38. A record is an exempt record if its disclosure under this Bill would, or would be likely to endanger the life, health and safety of any individual

Records affecting life health and safety

39. (1) A record is an exempt record if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege unless the person entitled to the privilege has waived it.

Records affecting legal proceedings or subject to legal professional privilege

(2) A record of the kind referred to in section 17(1) is not an exempt record by virtue of subsection (1) by reason only of the inclusion in the record of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 17(1).

40. A record is an exempt record if it is a record to which a prescribed provision of an enactment, being a provision prohibiting or restricting disclosure of the record or of information or other matter contained in the record, applies.

Records to which secrecy provisions apply

41. (1) A record is an exempt record if its disclosure under this Bill would involve the unreasonable disclosure of personal information of any individual including a deceased individual.

Records affecting personal privilege

(2) Subject to subsection (4), the provisions of subsection (1) do not have effect in relation to an application by an applicant for access to a record by reason only of the inclusion in such record of a matter relating to such applicant

(3) Where an application by an applicant other than a applicant referred to in subsection (2) is made to an institution for access to a record containing personal information of any individual including a deceased individual and the institution decides to grant access to the record, the institution shall, if practicable, notify the individual who is the subject of that information or in the case of a deceased individual, the next-of-kin of such deceased individual, of the decision and of the right to apply to a court for a review of the decision in accordance with section 81.

(4) Where an application is made to an institution for access to a record that contains information of a medical or psychiatric nature concerning the person making the application and it appears to the

institution that the disclosure of the information to that person might be prejudicial to the physical or mental health or well-being of that person, the institution may direct that the record containing that information, that would otherwise be given to that person is not to be given to him or her but is to be given to a medical practitioner to be nominated by that person.

42. (1) A record is an exempt record if its disclosure under this Bill would disclose -

Records relating to trade secrets business affairs etc

- [a] trade secrets;
- [b] any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
- [c] information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an undertaking, being information -

- (i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that undertaking in respect of its lawful business, commercial or financial affairs; or
- (ii) the disclosure of the information under this Bill would be contrary to public interest by reason that the disclosure would be reasonably likely to prejudice the ability of the Government or an institution to obtain similar information in the future for the purpose of administration of a law or the administration of matters administered by the institution.

(2) The provisions of subsection (1) do not have effect in relation to an application by an applicant for access to a record by reason only of the inclusion in the record of information concerning -

- (a) the business or professional affairs of such applicant; or
- (b) the business, commercial or financial affairs of an undertaking of which that applicant, or

a person on whose behalf such applicant made the application, is the proprietor.

43. (1) A record is an exempt record if its disclosure under this Bill would be contrary to the public interest by reason that it would be reasonably likely to have an adverse effect on the national economy.

Records affecting national economy

(2) The kinds of records to which subsection (1) may apply include but are not restricted to, records containing information relating to -

- (a) currency or exchange rates;
- (b) interest rates;
- (c) taxes, including duties of customs or of excise;
- (d) the regulation or supervision of banking, insurance and other financial institutions;
- (e) proposals for expenditure;
- (f) foreign investment in Nigeria; or
- (g) borrowings by the Government.

44. (1) A record is an exempt record if its disclosure under this Bill would divulge any information or matter communicated in confidence by or on behalf of a person or a government to a institution, and -

Records containing material obtained in confidence

- (a) the information would be exempt information if it were generated by an institution; or
- (b) the disclosure of the information under this Bill would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of an institution to obtain similar information in the future.

(2) This section does not apply to information -

- (a) acquired by a institution from a business, commercial or financial undertaking; and
- (b) that relates to trade secrets or other matters of a business, commercial or financial nature.

45. A record shall be an exempt record if public disclosure of the record would, apart from this Bill and any immunity of the state -

Records disclosure of which would be contempt

- (a) be in contempt of court;
- (b) be contrary to an order made or given by a commission or by a tribunal or other person or institution having power to take evidence on oath; or
- (c) infringe the privileges of the National Assembly.

of court or contempt of the National Assembly

46. A record shall be an exempt record if it is a non-public collection of –
- a. the National Archives
 - b. the National Library; or
 - c. the National Museum

Private records in custody of institution

held for and on behalf of an individual or institution other than an institution within the meaning of this Bill.

47. Notwithstanding any law to the contrary, an institution shall give access to an exempt record where, in all the circumstances of the case, to do so is in the public interest, having regard both to any benefit and to any damage that may arise from doing so in matters such as, but not limited to -

Disclosure of exempt records in the public interest

- (a) abuse of authority or neglect in the performance of official duty;
- (b) injustice to an individual;
- (c) danger to the health or safety of an individual or of the public; or
- (d) unauthorised use of public funds.

] (2) In considering whether or not to claim exemption under this Part, an institution shall act in good faith and use its best endeavours to achieve the object of this Bill to afford to citizens maximum access to official records consistent with public interest.

PART VI

IMPLEMENTATION BY INSTITUTIONS

48. (1) The authority of an institution shall, as soon as practicable and in consultation with the Fund compile in each official language a clear and simple guide containing practical information to facilitate the effective exercise of rights under this Bill, and shall disseminate the guide widely in an accessible form.

Guide to using the Bill

(2) The guide provided for in sub-section 1 shall be updated at regular intervals as the need may arise.

49. The Fund shall:-

- [a] publish a guide on minimum standards and best practices regarding the duty of institutions to publish pursuant to Part II; and
- [b] upon application, provide advice to an institution regarding the duty to publish

Guidance on duty to publish

50. (1) An institution shall maintain its records in such a manner as to facilitate the exercise of the right of access, as provided for in this Bill, and in accordance with the Code of Practice stipulated in sub-section (3)

Maintenance of records

(2) An institution shall ensure that adequate procedures are in place for the correction of personal information.

(3) The Fund shall, in consultation with institutions, issue and from time to time update a Code of Practice relating to the keeping, management and disposal of records, as well as the transfer of records to the National Archives)

51. (1) Upon the coming into effect of this Bill, (1) an institution shall establish a unit to be known as and called help desk.

Duty to establish Help Desk Unit

(2) A help desk shall be -

[a] headed by an authority who before entering upon his duties as such confirm to the Fund that he has delivered his duly signed but undated letter of resignation from his institution to his chief executive officer who shall be required to confirm in writing receipt of same.

[b] staffed by courteous fluent, competent, experienced personnel

[c] charged with responsibility for processing applications and

[d] answerable to the authority

PROVIDED that the authority shall alone be answerable for any sanctions under this Bill.

52. An institution shall provide training for its help desk personnel on the effective implementation of this Bill

Duty to train Help Desk personnel

53. (1) An institution to which this Bill pertains shall not later than the 31st day of March in each year, prepare and submit to the Minister, Head of Servicom and the Fund a report in such form as the Fund may direct on the activities of its Help Desk unit during the year immediately preceding and shall include in such report the following –

Duty to publish Annual Reports

- [a] the total member of applications received
- [b] the number of successful applications
- [c] the number of applications declined and the grounds for such declensions
- [d] the total number of declensions petitioned against institution
- [e] the number of unsuccessful applications
- [f] the number of pending applications as at the date of the report
- [g] the median number of days taken to resolve applications
- [h] the total amount of fees collected in respect of applications
- [i] the number of personnel directly engaged in processing applications
- [j] the total amount expended in processing applications and
- [k] any other pertinent information

(2) An institution shall make a copy of such report available on its website

(3) A copy each of such report shall also be sent to the Chairman and ranking members of the following Committees of both Houses of the National Assembly –

- [a] Committee on Government Reform Oversight of the House of Representatives
- [b] Senate Committee on Government Affairs
- [c] Senate Committee on the Judiciary
- [d] Senate Committee on Information and
- [e] House Committee on Information
- [f] Senate Committee on Ethics, Privileges and Public Petitions
- [g] House Committee on Ethics, Privileges and Public Petitions

54. The Head of Servicom of the Federation or of a State shall cause the annual reports from federal or State institutions as the case may be to be compiled into one comprehensive report

Duty to publish comprehensive Federal/State Annual Reports

PART VII

IMPLEMENTATION BY THE FUND

ESTABLISHMENT AND FUNCTIONS OF RIGHT OF INFORMATION TRUST FUND

55. Upon the coming into effect of this Bill, there shall be deemed to be established a Fund to be known as Right of Information Trust Fund in this Bill referred to as the Fund which shall be an institution corporate with perpetual succession and a common seal and with power to sue and be sued in its corporate name.

Establishment and composition of the Right to Information Trust Fund RITF

(1) Pursuant to Section 22 of the Constitution the Governing Organ of the Fund herein after referred to as “the Board” shall consist of -

- [a] a Chairman, who shall be the chief executive of the Fund
- [b] ten other editors or broadcasters of distinction who shall have given tangible evidence of their contribution to furthering the cause of freedom of information who shall be invited pursuant to this Bill to serve the Fund on a part time basis on the recommendation of the President of the Guild of Editors or the President, Association of Chief Executives of Radio and Television Stations, as the case may be,
- [c] two other members whether media practitioners or otherwise, invited to serve part-time on the merit of their contribution to the cause of freedom of information
- [d] a Secretary who shall perform the duties of the Chairman in his absence and shall be a legal practitioner of proven ability and cognate experience and a dedicated advocate of open government and genuine social justice in general and freedom of information in particular to serve in an *ex-officio* capacity and accordingly not each and every

provision of this Bill pertaining to membership shall necessarily apply to him.

56. (1) The members of the Fund shall in accordance with standing orders made by the Board appoint one of their number to serve as Chairman.

Appointment & Removal
of Chairman

(2) A Chairman appointed as in subsection (1) of this section may be removed by the Board

57. The Chairman and members of the Fund shall hold office for a period of five years in the first instance and shall be eligible for re-appointment for one further term of five years only.

Term of office of Trus-
tees

58. (1) Notwithstanding the provisions of this Bill a trustee of the Board shall cease to hold office as such if he –

- [a] becomes bankrupt, suspends payment of his debts or compounds with his creditors; or
- [b] is convicted of a felony or any offence involving dishonesty or fraud; or
- [c] becomes of unsound mind, or incapable of carrying out his duties as trustee; or
- [d] is guilty of serious misconduct in relation to his duties; or
- [e] is disqualified or suspended other than at his own application from practicing his profession in any part of the world by an order of a competent authority made in respect of that trustee; or
- [f] resigns his appointment by letter addressed to the Secretary of the Board

Disqualification, etc. of
members of the Fund

(2) Where the Fund is of the opinion that the continued presence on the Board of any member is not in the national interest or the interest of the Fund it shall call on the member concerned to resign in honour his membership of the Fund.

59. The Fund shall have its Head office in any location which by law is the capital for the time being of the Federal Republic of Nigeria and may open branch offices in any part of Nigeria and appoint agents and correspondents as the Board deems fit.

Head office of the Fund,
etc.

60. The Board shall have power –

- (1) to consider all questions connected with freedom of information
- (2) to represent express and give effect to the views and opinions of crusaders for freedom of information
- (3) to promote or oppose bills or other measures affecting freedom of information
- (4) to collect and circulate statistics and information of all kinds
- (5) to establish, maintain and carry on schools or colleges institutes organize exhibitions, fairs, seminars and workshops, arrange, supervise and control training at or by means of which tuition in any subject or subjects may be obtained by any means whatsoever and in particular but without prejudice to the generality of the foregoing in or with regard to freedom of information and all or any subjects whatsoever that may be included in a technical scientific or academic education or may be conducive to knowledge of or skills in any trade, pursuit or calling.
- (6) if thought desirable to fund scholarships, bursaries and forms of assistance and to hold examinations and award prizes, certificates diplomas and distinctions to persons who are or have been students instructed or examined by or by the direction of the Fund
- (7) to acquire offices and other premises for the use of the Fund
- (8) to appoint officers which in its opinion are required for carrying out the functions of the Fund and the objects of the Bill.
- (9) to fix terms and conditions of service including allowances fees and remuneration for agents servants and contractors of the Fund
- (10) to remunerate any person or company for goods and services delivered or to be delivered
- (11) to subscribe to and promote the aims and objects of any society or association having similar objects to all or any of the objects of the Fund and to encourage and support any society association or movement in furtherance of freedom of information
- (12) to promote research into the special problems associated with access to records and information and the right to know
- (13) to promote cultural, scientific and social intercourse between the Fund and any society or association whose objects and purposes are similar or in part similar to the objects and purposes of the Fund
- (14) to take such steps by personal or written appeals, public meetings or otherwise, as

Powers of the Board

- may from time to time be deemed expedient for the purposes of procuring contributions to the Fund in the shape of donations, annual subscriptions or otherwise
- (15) to print and publish newspapers, periodicals books, brochures or leaflets that the Fund may think desirable for the promotion of its objects and purposes
 - (16) to manage alter improve maintain sell lease mortgage dispose of or otherwise deal with all or any part of the property of the Fund
 - (17) to take any gift of property, whether subject to any special trust or not for any one or more of the objects of the Fund
 - (18) to borrow or raise and give security for money by the issue of or upon bonds, bills of exchange, promissory notes or other obligations or securities of the Fund, or upon mortgage or charge upon all or any part of the property of the Fund
 - (19) to invest the monies of the Fund not immediately required for its purposes in or upon such investments, securities or property as may be thought fit, subject nevertheless to such conditions if any and such consents if any as may for the time being be imposed or required by law
 - (20) to establish and support and to aid in the establishment and support of, any associations formed for all or any of the objects or purposes of this Bill.
 - (21) to support and subscribe to any charitable or institution, and any institution, society or club which may be for the benefit of the Fund or its servants, to give pensions, gratuities or charitable aid to any person who may have served the Fund or to his wife, widow, children or other relative of such persons to make payments towards insurance, and to form and contribute to the provident and benefit funds for the benefit of any persons employed by the Fund.
 - (22) to use its best endeavours to transform records and information into a national resource
 - (23) to decline to appear in and defend or compromise any action or other lawful act or proceeding and to reserve the right to demand that all or any dispute or difference howsoever arising as to the rights duties or liabilities of the Fund or of its members or as to any other matter in any way connected with or arising out of the subject matter of this Bill shall be submitted to an arbitrator or an umpire and to decline or resist payment of any sum of money or compliance or fulfillment of any claim or demand or otherwise as the Board shall think fit
 - (24) to act in the name of the Fund
 - (25) generally to do all such other things and enter into such other transactions as in its opinion are reasonably incidental or conducive to the attainment of its functions and the objects and purposes of this Bill.
 - (26) The income and property of the Fund shall be applied solely towards the promotion of the objects and purposes of this Bill, and no portion of the income or property shall be paid transferred directly to the members of the Board except as permitted by law

PROVIDED that nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any officer servant or agent of the Fund, in return for any services actually rendered to the Fund, nor prevent the payment of interest at a rate permissible by law on money lent, or reasonable and proper rent for premises demised or let by any member of the Fund; but so that no member of the Board shall be appointed to any salaried office of the Fund or to any office of the Fund paid by fees and that no remuneration or other benefit in money or money's worth shall be given by the Fund to any member of the Board except repayment of out-of-pocket expenses and interest at the rate aforesaid on money lent to the Fund, provided that the provision last aforesaid shall not apply to any payment to any company of which a trustee of the Fund may be a member and in which such member shall not hold more than one-hundredth part of the capital, and such member shall not be bound to account for any share of the profits he may receive in respect of any such payment.

- (27) Every trustee of the Fund undertakes to contribute to the assets of the Fund, in the event of its being wound up while he is a trustee, or within one year after he ceases to be a trustee, for the payment of the debts and liabilities of the Fund contracted before he ceases to be a trustee, and of the costs, charges and expenses of winding up, such amount as may be required not exceeding N1,000,000.00, so however the total amount to be so contributed by all the trustees shall not be less than N13,000,000,00

time shall have effect with respect to the proceedings of the Board of the Fund and to other matters therein mentioned

PART VIII

FINANCIAL PROVISION FOR THE FUND

62. Neither the Government of the Federation nor of a State, Local or Area Council shall be required to make appropriations to the Fund

Independence of the Fund

63 (1) Pursuant to sections 22 and 23 of the Constitution the press, radio, television and other agencies of the mass media shall be obliged within 90 days of the close of their financial year to pay to the Fund five per cent of their surplus or profit before tax for each year as their contribution for the next ensuing year.

Contributions of Media Agencies

(2) The contribution payable under sub-section (1) of this section shall be made promptly and in default thereof shall attract a surcharge calculated at the rate of one per cent for each day for which the contribution or part thereof remains outstanding, and shall be a charge on the contribution for the next ensuing year.

(3) Such other sums as may accrue to the Fund either in the execution of its functions under this Bill or in respect of any property vested in the Fund or otherwise howsoever

PART IX

ADMINISTRATION OF THE FUND

64. The quorum of the Fund shall be eight including the Chairman and the Secretary.

Quorum

65. Subject to the provisions of any applicable standing orders, the Fund shall meet whenever summoned by the Chairman, and if the Chairman is required to do so by notice given to the Secretary by

Meetings of the Fund

Chairmanship of meetings of the Fund

Membership of Committees

Committees of the Fund

Funds to determine committee membership sealing

Committee decision subject to Fund confirmation

Vacancy/stranger not to invalidate proceedings

Trustees to declare interest

Offences under the Bill

Sanctions under the Bill

Immunity from Civil or Criminal liability in certain cases

Whistleblowers

Good faith disclosures

Immunity against actions for defamation or breach of confidence

spect of applications, in the *bona fide* belief that the access was required by this Bill to be given, no action for defamation or breach of confidence lies by reason of the authorising or the granting of the access, against the Government or an institution or against the authority or the help desk personnel who granted the access.

Immunity against offences

(2) Save as provided in S.75 herein the granting of access to a record (including an exempt record) in consequence of an application shall not be taken, for the purposes of the law relating to defamation or breach of confidence, to constitute an authorisation or approval of the publication of the record or of its contents by the applicant.

79. Where access has been granted to a record and -
- (a) the access was required by this Bill to be given; or
 - (b) the access was authorised by an authority, in accordance with section 23, to make decisions in respect of applications, in the *bona fide* belief that the access was required to be granted by this Bill, neither the authority nor any person concerned in the granting of the access is guilty of a criminal offence by reason only of the authorising or granting of the access.

Correction of personal information

PART XIII

MISCELLANEOUS

80. (1) Where a record of an institution to which access has been given under this Bill or otherwise, contains personal information of a person and that person claims that the information -

- [a] is incomplete, incorrect or misleading; or
 - [b] not relevant to the purpose for which the record is held,
- the institution may, subject to subsection (2) of this section on the application of that person, amend the information upon being satisfied of the claim.

(2) An application under subsection (1) shall -

- [a] be in writing; and
- [b] as far as practicable, specify:
 - (i) the record or official record containing the record of personal information that is claimed to require amendment;
 - (ii) the information that is claimed to be incomplete, incorrect or misleading;
 - (iii) whether the information is claimed to be incomplete, incorrect or misleading;
 - (iv) the applicant's reasons for so claiming; and
 - (v) the amendment sought by the applicant.

Review of a decision of an authority

(3) To the extent that it is practicable to do so, the institution shall, when making any amendment under this section to personal information in a record, ensure that it does not obliterate the text of the record as it existed prior to the amendment.

(4) Where an institution is not satisfied with the reasons for an application under subsection (1), it may decline to make any amendment to the information and inform the applicant of its declension together with its reasons for so doing.

81. (1) Any person aggrieved by a decision of an institution under this Bill may apply to the court for a review of the decision and the court, after considering the application, may confirm, vary, remit or set aside the decision.

Time limits

(2) Any person aggrieved by the issue of a certificate under subsections 34(3) or 36(3), may apply to the court for a review as to whether the record referred to in the certificate is [one] of a kind referred to in section 34 or section 36, or a record described in section 35, as the case may be, and if the court finds that it is not, may quash the certificate or the decision.

Interpretation

(3) Notwithstanding any other law to the contrary, where an application for judicial review of a decision of a institution under this Bill, that application shall be heard and determined in Chambers, unless the Court, with the consent of the parties, directs otherwise.

(4) In this section, "decision of an institution" includes the failure of an institution to comply with provisions of this Bill.

82. An exempt record shall five years after entering upon that status cease to qualify as such

83. Interpretation

In this Bill unless the context otherwise requires:

- "absolute right of access" means the free unfiltered and unimpeded right to know the contents of a record conferred on a citizen of Nigeria under this Bill
- "administration"
- "applicant" means a citizen of the Federal Republic of Nigeria who expresses a desire to

take advantage of the provisions of this Bill and includes agencies of the mass media and bona fide contributors to the Fund

- “application” means a formal letter submitted by an applicant to an institution within the meaning of this Bill in the exercise the right of access guaranteed under this Bill
- “authority” means an officer in the management cadre of an institution immediately below the rank of the chief executive officer of that institution formally assigned to coordinate the operation of the help desk unit of the institution, whether or not assigned or performing other duties as well
- “Board” means the Governing Organ of the Fund
- “body” means any registered association and includes institutions under this Bill.
- “Constitution” means the Constitution of the Federal Republic of Nigeria 1999 and any statutory modification or re-enactment of the same
- “communicate” means to convey knowledge of or information in respect of the contents of a record
- “consultation” means appropriate deliberations whether intra institution or otherwise with a view to determining the propriety or otherwise of granting a right of access
- “content” means the details contained in a record
- “court” means the High Court of the Federal Capital Territory or of a state in which an institution maintains its office and includes the Federal High Court
- “deferral” means the postponing for a time, on reasonable grounds, the granting of a right of access
- “disclose” bears the same meaning as communicate so that it is satisfactorily received or understood
- “disclosure” means the communication of a record or information whether on application or otherwise
- “enactment” means an Act of the National Assembly or the Law of a State
- “Fund” means The Right to Information Trust Fund
- “Gazette means in the case of an institution of the Federal Republic of Nigeria the Federal Gazette and in the case of a State, the State Gazette
- “Government” means the government of the Federal Republic of Nigeria or of a State of the Federation or of a Local or Area Council in Nigeria
- “help desk” means a unit of an institution created pursuant to this Bill headed by an authority and manned by a minimum of two trained full time personnel and responsible for processing applications under the supervision of an authority
- “holding” means possessing custodying or having control of or over a record or information and includes originating the record
- “information” means the communication of knowledge or intelligence derived from a record but lacking the formalities of a record within the meaning of this Bill
- “institution” means any institution politic, office, department, board, branch, committee, corporation, company, agency, commission, council, official or person of management cadre of government whether federal state local area municipal whether executive legislative or judicial in Nigeria and any branch of same and includes any private institution incorporated in Nigeria undertaking public functions.
- “investigation” means an official and systematic inquiry into the circumstances of an incident pursuant to the provisions of an enabling Bill
- “judicial review” means an accelerated review undertaken by a judge of the High Court in Chambers quash or uphold the decision of an authority under this Bill.
- “Minister” means in relation to Government
- “order” means an authoritative direction of a High Court
- “organization” bears the same meaning as body.
- “personal information” means a first and last name, home or other physical address, including street name, an electronic mail address, a telephone number, a National Identity Card Number, National Health Insurance Number, National Pension Number, a tax identification number, drivers’ licence number, passport number, or any other government issued identification number or a credit card, debit card, bank account number or any password or access code associated with a credit card or bank account contained in a record of an identified or identifiable person whether a citizen of Nigeria or otherwise
- “petition” means a written application as may be prescribed in the High Court Rules of the particular court.
- “private personal content” means an extract or copy of a record to which an applicant is not entitled to access without the verifiable written consent of the individual concerned himself

- “privilege” means a right or immunity attached specifically to a position or an office
- “qualified right of access” means the right on the part of an applicant to know the contents of a record other than exempt and personal records
- “record” means a facsimile of an entry, portrayal, insignia marking image, audio or visual recording, writing of any kind in any manner on any material in a card chart record drawing from graph map photograph plan book databank database disc diskette file journal literature negative tape microfilm microfiche library whether in an archive or otherwise or any other device embodying the same so as to be capable of being reproduced whether proximally or remotely with or without the aid of some other device or equipment duly certified as true to the original in form and content whether such certification be on the facsimile proper or in an accompanying certificate duly identifying the facsimile beyond reasonable doubt by an authority of an institution holding the same and includes the original record Seal
- “review” means the preliminary examination undertaken by an institution to determine whether or not an applicant under this Bill has an absolute or qualified right of access to a record Contractual Arrangements
- “sanctions” mean the provisions of Part XI of this Bill
- “Secretary to Government” means in the case of the Federation, the Secretary to the Government of the Federation, in the case of a State, the Secretary to the Government of the State Entry into duty
- “State” means a state of the Federal Republic of Nigeria
- “statute” bears the same meaning as enactment

SCHEDULE

1. The fixing of the seal of the Fund shall be authenticated by the signature of the Chairman or some other person authorized by him and the Secretary

2. Any contract or instrument which if made or executed by a person not being an institution corporate will not be required to be under seal may be made or executed on behalf of the Fund by the Chairman and the Secretary or any person generally or specifically authorized to act for that purpose by the Fund.

3. Upon the coming into effect of this Bill, an acting Secretary shall enter upon his duties as provided herein

84. **CITATION:** This Bill shall be cited as the Freedom of Information Bill 2005.

EXPLANATORY NOTE

85. This Bill seeks to provide a right of access to public information or records held by government, public institutions and private bodies performing public functions and to ensure the availability of public records and information to citizens in general and media practitioners in particular pursuant to sections (22) and (23) of the Constitution which provide to the effect 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 Chapter II – ‘Fundamental Objectives and Directive Principles of State Policy’ and uphold the responsibility and accountability of the Government to the people.

The national ethics shall be Discipline, Integrity, Dignity of Labour, Social Justice, Religious Tolerance, Self-reliance and Patriotism