

Freedom of Information Act: A Threat to National Security?

Christian C. Ngwu & Luke Ifeanyi Anorue,
Charles C. Makata & Okwudiri C. Ekwe

Abstract

The passage of the Freedom of Information bill into law brought to an end the most exciting legislative odyssey in post colonial Nigeria. After more than a decade, the long awaited FOI bill that was meant to guarantee freedom of the press and access to information was finally passed into law as an Act of the National Assembly. This 32 sections Act, according to the initiators is meant to increase access to public information which were formerly concealed under the Official Secret Act, and tagged 'Classified Documents'. However, as beautiful and well intentioned as this Act might appear, some observers believe it is a serious threat to the nation's internal and external security. Section 11(2) of the Act specifically says that when the demand for any information, including security information, is in public interest, irrespective of the injury it might cause, such must be disclosed. In fact, section 27(1) says that anything contained in the Criminal Code, Penal Code, and the Official Secrets Act shall be made public irrespective of the injury it might cause. With this, legal and security experts fear that this may open windows for serious insecurity, especially in the face of the Boko Haram terrorism. However, others have argued that the provisions of the Act regarding the disclosure of security information are in order, considering the fact that many have hidden under the Official Secret Act to perpetrate a lot of evil in the name of national security. To this end, the researchers sought the opinions of security and legal experts in South-East Nigeria on the provisions of the Act vis a vis their alleged threat to the nation's security. Using both Survey and Focus Group Discussions, findings revealed that the Act does not in any way threaten national security if properly applied.

Key Words: .FOI Act . Access .Records .National Security .Official Secret Act

Introduction

All over the world, matters of national security and freedom of expression have always taken the centre stage, because of their strategic importance to the corporate existence and development of any nation. It is unarguably a fact that no nation can afford to neither treat with levity the security of its territorial integrity nor ignore completely what its citizens think or say. Even the worst dictatorial and closed governments of the world allow for one form of freedom of expression or the other. However, what is in dispute is the extent to which such freedom is allowed.

In most developed democracies of the world like the United States, Britain, France and Sweden, governments have always struck a balance between national security and freedom of expression. In the United Kingdom, government sees freedom of expression or press freedom as equal to national security. This is evidenced in its Bill of Right and the Second Amendment. Both its (US) Constitution (Second Amendment) and Bill of Right categorically state that nothing shall abridge the freedom of the press. In far away Sweden, the freedom of expression guaranteed since 1776 has earned the country one of the most stable democracies in the world (Oyedokun, 2012, para.2). The same can, also, be said of United Kingdom where the government strikes a balance between freedom of expression and national security.

However, the case is entirely different with government in third world nations. In Africa and most parts of Asia and Latin America, the quest to remain in power and safeguard the sovereignty, "flag" independence and territorial integrity of their countries is not only paramount in their minds but might be their only legacy when they are eventually brought

down by illness or overthrown. In fact, in Africa, there is no clear definition of what constitutes national security. A lot is done in the name of national security. Don't ask us what? In the words of Nnoli (2006, p.1):

In Africa, even the boundless attribution of the Africa leader to remain in office is projected as national interest. Such a leader is often determined to survive, even at all cost. In such circumstances, the leader's arbitrariness in the exercise of power replaces respect for the nation's laws, values, norms and procedure. Still he justifies his actions in the name of national security.

Nnoli (p.1), is not through yet; he goes further to lament that:

In the name of the same national security, governments have built up enormous official bureaucracy devoted to secrecy, intelligence gathering, including spying, surveillance, repression and behind the scene operation. The influence of this bureaucracy on other aspects of government and the lives of the population has been tremendous. Because of it national security has acquired a cloak-and dagger image.... State Security Services [personnel] can kick-in doors during the very early hours of the morning to interrogate people without feeling of any qualms about it. All seems to be pardoned that is done in the name of national security.

Supporting the claims of Nnoli (2006), Jack and Post (2011, p.49), argued that governments in the third world shroud everything in secrecy in the name of national security. According to experts, the Nigerian Official Secrets Acts of 1962 and 1990 were designed to give governments and their acolytes the needed cover to perpetrate all manners of evil. Fundamental human rights of citizens are clearly abused in the name of protecting official documents tagged "classified". Section 1 (a) and (b) of the Official Secret Act states that:

A person who transmits any classified matter to a person to whom he is not authorized on behalf of the government to transmit it; or obtains, reproduces or retains any classified matter which he is not authorized on behalf of the government to obtain, reproduce or retain, as the case may be shall be guilty of an offence.

Section 2 of the said Act says:

A person charged with an offence under the foregoing subsection(s) shall, unless the contrary is proved, be deemed to have acted for a purpose prejudicial to the security of Nigeria if from his character or general conduct and from all the circumstances of the case it appears that he acted for such a purpose.

To make the case worse, Section 9 of the Act defines classified matter to mean any information which under any system of security classification from time to time in use by the government or by any branch of the government, is not to be disclosed to the public and of which the disclosure to the public would be dangerous to national security (Umeh, 2009, p.21). With this, every government's malfeasance or drunkenness is seen as national secret.

All these were to give way to a people's legislation that recognizes the need for citizens to express themselves on matters affecting their collective good and existence. The argument by "closed governments" in the past that most government dealings should be protected was to be laid to rest in the permanent grave of corruption with the passage of the Freedom of Information Bill into law on 28 of May 2011. The emergence of the Freedom of Information (FOI) Act 2011, arguably opens doors for an "open government" and renders the Official Secrets Act useless. Without any fear of contradiction, the FOI Act 2011 is superior to the Official Secret Act. According to the Attorney- General of the Federation and Minister of Justice, Mr. Mohammed Bello. Adoke, "any inconsistency between the FOI Act and the Official Secrets Act should ordinarily be resolved in favour of the FOI Act in accordance with the well-known canon of statutory interpretation that a latter statute prevails where there is inconsistency between two statutes" (Ajayi, 2012, para. 2).

Apart from the murder of the Official Secret Act, the FOI Act has equally given all Nigerians the opportunity to hold government accountable in all matters including national security. Experts say that the Act has effectively separated politicians' quest for survival from

our collective quest for safety (security). Section 1 of the FOI Act 2011 gives everyone the right to demand for any information from the public and private institutions in Nigeria. Subsection 3 gives everyone the right to institute legal action if such information is denied.

On national security, Section 11 (2), gives everyone the right to demand for information that even borders on national security irrespective of the injury it might cause. The sub-section reads:

Notwithstanding sub-section (1), an application. For information shall not be denied where the public interest in disclosing the information outweighs whatever injury that disclosure would cause.

The implication of the sub-section above and Section 1 (1) of Act is that even security information that is in public interest can be disclosed as so long as it is in public interest. (FOI Act, 2011).

No doubt, notable journalists like Tunde Thomson, Nduka Irabor (all of The Guardian Newspaper) and many others who came under the evil hammer of the military boys and Official Secret Act must be grateful for the initiator of the FOI Act and President Goodluck Jonathan who signed it into law.

However, just before we join Thomson, Irabor and others to celebrate, let us listen to some experts. According to these experts (Okoro, 2012 and Njoku 2012), the FOI Act 2011 as presently in use is a serious threat to national security. For them, sensitive security information if disclosed in the name of public interest, will pose a serious security risk. This is further compounded with the present Boko Haram terrorism. Other experts, however, say the Act does not in anyway endanger national security so long as it is properly implemented. The question now is who is right on this? In the light of this complexity, the researchers sought to find out whether the Act actually poses a threat to national security by seeking the professional opinions of legal and security experts in South-Eastern Nigeria.

Objective of the Study

The singular objective of this study is to find out whether the Freedom of Information Act 2011 poses any threat to national security.

Research Question

Does the Freedom of Information Act 2011 pose any threat to national security?

Literature Review

In every society, the security of lives and properties is no doubt, very fundamental. Security is an expedient issue that all the nations of the world have consistently worked toward its actualization. This is very fundamental, because no nation can make any progress in the midst of continued insecurity. Insecurity engenders stagnation, retrogression and devastation which ultimately lead to under-development. The pains arising from the crisis/insecurity raven nations such as Egypt, Tunisia, Syria and many other parts of the world are practical examples of the devastating effects of insecurity. The rate of crimes occasioned by insecurity in these countries is very alarming. Development is, no doubt, on a standstill or even retrogressing. These malfeasances are just a little of what happens to a nation without national security.

National security entails freedom/liberty from threats, perceived fears and dangers that constitute anxiety and discomfort in a given nation. National security is not only a value that is cherished by statesmen and national leaders, but, also, a popular value. The British would remember the battle of Britain during the Second World War, when the German Air force tried to bomb the country into submission and thank their national security efforts for the outcome. On the other hand, France would look back on the occupation of its territory during the first and Second World wars and blame the lack of national security for it. Israel would look back on its entire history as a nation-state and thank its emphasis and efforts on national security for its survival. Similarly, the Arabs have failed to dislodge Israel and recover their land, because of inadequate emphasis on national security, as well as the inability to fashion the wherewithal to provide this security. Obviously, the Somali people, whose state has collapsed, wish that they had got their national security efforts right and paid greater attention to that security. The

same applies to Soviet Union, Yugoslavia, Congo-DRC, Sudan, Uganda and Iraq whose territorial integrities have been seriously compromised or whose populations have suffered untold hardships from protracted or complicated civil wars (Nnoli, 2006, p.6).

Recent developments in the African continent have shown that the need for security in the continent is not just important but very urgent. The Egypt, Tunisia, etc experiences are true affirmation of the above assertion. It has been one security problem in the North, South and West Africa.

Security has become a big issue in Africa today because of the various forms of carnage, brutality, pogroms and even genocide associated with incessant civil wars and other forms of violent conflicts on the continent. Between 1980 and 2000, the continent witnessed unprecedented violence of all sorts, including civil wars, ethnic massacres and pogroms, religious violence and political oppression. These conflicts as exemplified in Somalia, Cote d'Ivoire, Congo (DRC) Rwanda, Algeria, Sierra Leone, Angola, Congo (Brazzaville) and Liberia, have redirected the discussion of security to the question of physical survival. The collapse or near collapse of states has made physical safety the preeminent concern of most Africans. The state is no longer able to generate the fundamental conditions for the protection of life (Nnoli, 2006 p.7).

Nigeria in particular has had and is still having her own share of security challenge. We had the Niger Delta militancy crisis, the persistent crisis in Jos, and the current Boko Haram insurgencies in Northern Nigeria. Also, we have armed robbery attacks, kidnapping, political thuggery, and so many others.

Consequent on the above, many nations have come to recognize the importance of national security and have begun to take steps to enforce it. Nigeria is no exemption. The Nigerian Federal government has initiated different approaches to combating insecurity in the country. These approaches include amongst others, the use of the military.

However, one approach Nigeria recently introduced to engender national security and ensure freedom of expression is the passage of the Freedom of Information Bill into law. The idea of the Act, according to the proponents, is to give the masses the right to be heard and to receive information. This is as against what happened during the military era -a situation where the public is not expected to say anything or effectively exercise their freedom of speech. This inability of the masses to speak out their minds on certain national issues compelled most of them to resort to violence and cause untold mayhem. The FOI bill, which came in 1993 with 32 sections, was signed into law on 28 May, 2011, by President Goodluck E. Jonathan.

Since the passage of the bill and consequent signing into law, journalists, legal and security experts have been taking a critical look at the various sections of the Act to find out the areas of convergence and divergence with regard to national security. To this end, studies have been conducted to ascertain whether the Act poses a threat to national security or not. Adeyemi (2012, p.31), unveiled in his study that the Act constitutes a threat to national security. He cited Section 1 of the Act as the basis of his argument. The section states:

Notwithstanding anything contained in any other Act, law or regulation, the right to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution, howsoever described, is established.

Adeyemi contended that with this section, security information that will expose the nation for possible attacks may be released.

Also, Kene, (2012, p.11), revealed in his study that the freedom of information is a serious threat to national security. He also used Section 1 (1) as the basis for his argument, but went further to cite subsection (3) as a subsection that compels the holder of such information to release it through an order from the court. Kene argued that with the court, much security information may be compelled to be released. Andossar (2011, p.9), agreed with Kene when he equally revealed in his study that the FOI Act is a fundamental threat to the security of the nation. He cited Section 11 (2) as the yardstick for his argument. The subsection states that:

Notwithstanding sub-section (1) an application for information shall not be denied where the public interest in discharging the information outweighs whatever injury that disclosure would cause.

Andossar contended that this Section 11 (2) is nothing but an obvious threat to the security of Nigeria. He concluded with a question: what will be the fate of Nigeria if security agents are mandated to release sensitive security information under this subsection? In fact, he recommended an immediate review of the Act.

In sharp disagreement with the above studies, lots of studies have contended that the Act guarantees national security. The findings of these studies point to the fact that the Act is very much acceptable in line with national security. Okafor (2012, p.37), found in his study that the newly signed Freedom of Information Act does not pose any threat to national security. He contended that the exemption clauses effectively make it impossible for anybody to release information that can threaten national security. Adekunle (2012, p.14), agreed with Okafor when he unveiled in his study that the FOI Act took much cognizance of national security. He made reference to Section 19 (1) and (6):

- (1) A public institution may deny an application for information that contains information pertaining to
- (2) Architects' and engineers' plan for building not constructed in whole or in part with public funds and for buildings constructed with public funds to the extent that disclosure would compromise security.

Furthermore, Obi (2012, p.56), unveiled in his study that FOI Act does not in any way threaten national security. He affirmed that some relevant sections (the exemption clauses) allowed for non-disclosure of information that may jeopardize national security. He stated that it will be most unfair if any one alleges that the Act is a threat to national security. Isa (2012, p.43), equally corroborated the finding of Obi when he also revealed in his study that the Act is not a threat to national security. In fact, he opined that an evaluation of the various sections and sub-sections revealed that the national security of Nigeria is very much protected by the Act.

More so, Kemi (2012, p.73), in her study of journalists perception of the FOI Act, found that information is exempted from disclosure if the exemption is required to safeguard national security. She affirmed that if there will be need to amend the Act, national security will not be the target as it has already been covered by the Act. Abdullahi (2011, p.21), in his study unveiled that the Act guarantees national security. The case against the Act as being a threat to national security cannot stand. He hinged his argument on Section 11 (1) which states that:

Public institution may deny an application for any information the disclosure of which maybe injurious to the conduct of international affairs and the deference of the federal republic of Nigeria.

Adullahi asked why anyone will say that the Act threatens national security? He further opined that "any one that sees the Act as a threat to national security does not have a good understanding of the contents of the Act and Section 45 of the Constitution".

Again, Olisa (2012, p.91), found in his study that the FOI Act is a document that protects national security and public safety. He further found that the Act frowns at any form of offence committed by any person. David (2011, p.11), upheld Olisa's finding when he revealed in his study that the FOI Act does not pose a threat to national security. Rather, it contributes to national security. To support this finding, he cited sections 11, 12, 14, 15, 16, 17, 19, 20 and 21 of the Act as exemption sections that permit public institutions to deny anyone access to information when such information may or is seen to cause problem of any kind. He described these sections as 'soldiers' whose job is to enforce the security of the nation.

Furthermore, Rotimi (2012, p.15), also contended that the FOI Act is not a threat to national security. He unveiled in his study that the Act is even a player in Nigeria's effort to engender national security. He asserts that there are sections and subsections that support this claim. He cited a few of the sections as sections 12, 17, 19, etc. He affirmed that these sections and others help to checkmate the release of information, especially when it has to do with national security.

The study is anchored on the *Social Responsibility theory* of the media. This explains the need for freedom ,but with responsibilities.

Methodology

Research Design

To effectively sample the opinions of legal and security experts in South-Eastern Nigeria, the researchers used Explanatory Mixed Method design. According to Creswell (2002, p.566), the Explanatory Mixed method design “consists of first collecting quantitative data and then collecting qualitative data to help explain or elaborate on the quantitative results.

Since Explanatory Mixed method calls for the use of more than one research method or data collection instrument in a study, the researchers used Cross-Sectional Survey and Focus Group Discussion. Survey was used to generate both quantitative and qualitative data, while Focus Group was used to generate only qualitative data.

Population of Study

The population of this study is all the residents in the five (5) state capitals of the South-Eastern states. According to the figure released by the National Population Commission (NPC Census, 2006), the population of the five state capitals in South-East is 1934437.

Sample Size

The researchers opted for the selection of a manageable and representative sample size that will produce valid results because of the largeness of the population. To this end, the researchers used the Australian Online Calculator as provided by the National Statistical Service (NSS) to draw a sample. Using a confidence level of 95 percent and precision level of 0.05 (5%), a sample size of 385 was obtained. The calculation is presented below:

Figures received after calculation

The image shows a screenshot of a web-based calculator titled "Determine Sample Size". The interface has a green background and contains several input fields and output results. Each input field has a corresponding information icon (a blue 'i' in a circle) to its right. The calculator is set to a 95% confidence level, a population size of 1934437, and a proportion of 0.5. The confidence interval is set to 0.05, resulting in an upper bound of 0.55000 and a lower bound of 0.45000. The standard error is 0.02551, the relative standard error is 5.10, and the final calculated sample size is 385.

Parameter	Value
Confidence Level	95%
Population Size	1934437
Proportion	0.5
Confidence Interval	0.05
Upper	0.55000
Lower	0.45000
Standard Error	0.02551
Relative Standard Error	5.10
Sample Size	385

www.nss.gov.aunss/home.nsf/nss/0a4a642cf12719dcca2571aboo243dc62

Sampling Technique

The researchers used Purposive sampling method to get the opinion of security and legal experts on the issue under study. This method was adopted because the researchers wanted to collect data from only those who understood clearly the subject matter. Therefore, only lawyers and security personnel resident in the five state capitals were selected.

Measuring Instruments

The measuring instruments used in this study are the questionnaire, interview and focus groups discussion. The questionnaire was used to generate quantitative data, while the interview and focus group discussion were used to generate qualitative data. The questionnaire was used to get responses for the 385 experts sampled. Personal interviews were held in the five South-Eastern states. Focus group discussion was equally conducted using selected experts as discussants.

Validity and reliability tests were done to ascertain the appropriateness of the measuring instruments.

Result and Analysis

Here, both quantitative and qualitative data collected from the field are presented.

Research Question: Does the Freedom of Information Act pose any threat to National Security?

Table 1: Have you studied the contents of the FOI Act 2011?

Experts	Yes	No	Total	%
Security Expert	121	28	149	40.2%
Legal Expert	220	2	222	59.8%
Total	341	30	371	100%

Table 1 above shows that out of the 385 copies of questionnaire that were administered to the respondents, 371 copies were returned and adequately completed, while 14 copies were not returned.

Out of the 371 respondents used, 149 of them are security experts, while 222 are legal practitioners. 341 of the respondents have read the entire FOI Act, 30 have not. From the table, the numbers of those who have read the Act are more.

Table 2: Do you think the Act poses a threat to national security?

Experts	Yes	%	No	%	Can't say	%	Total
Security Experts	62	68.1	78	29.1	9	75	149
Legal Experts	29	31.9	190	70.9	3	25	222
Total	91	100%	268	100	12	100	371

From the data in the table above, 91 respondents said that the FOI Act is a threat to national security, while 268 respondents representing 72.2 percent said it does not pose any threat to national security. However, 12 respondents were not sure whether it poses a threat or not.

The data above is complemented here with data generated through interview and focus group discussion.

In the interview, a total of 20 security and legal experts purposively selected from the five states were interviewed on what they thought about the Freedom of information Act 2011 and Nigerian national security. The outcome of the interview showed that 81 percent of legal experts were of the view that the Act does not constitute any security breach in the country. 54 percent of security experts were of the opinion that it is not a threat.

The interview also revealed that legal experts insist that the Act in itself is not a threat, but how journalists and security personnel go about it can be a threat. In their opinion, if journalists and Nigerians stick to the provisions of the Act, it will balance the need for adequate security and public right to ask questions on how they are protected by security agencies.

Security experts interviewed equally shared the views of these legal experts but insisted that they can only give out information that will not be inimical to national security to the extent the Act determines.

Focus Group Discussion was equally conducted with both security and legal experts in attendance. The focus group held in only three out of the five states, because of the difficulties the researchers had assembling experts. The participants in the focus group discussions expressed the view that the FOI Act is not a threat to national security. According to them, the overriding principle of the Act which gives all citizens the right to seek information no matter the injury it might cause, does not invalidate Section 45 of the 1999 Constitution which gives the President Powers to use any means to ensure national security. These experts argued that the FOI Act is inferior to the Constitution and as such does not invalidate the powers of the President during national emergencies. The outcome of this study is largely supported by the findings of Kemi (2012) and Abdullahi (2012).

Summary of Finding

Both quantitative and qualitative data generated in this study showed that the Freedom of Information Act 2011 does not pose a threat to national security.

Conclusion

From the result of this study, it is obvious that the FOI Act 2011 does not pose any threat to national security except otherwise stated by a competent court of competent jurisdiction. The researchers, therefore, conclude that only cases that will be determined by courts on the issues in future will reveal the true nature of the situation.

Recommendations

From the materials reviewed and the outcome of the study, the researchers recommend that the security community should be willing to give out information to the public in line with the provisions of the Act. The general public should, also, be prudent in their demand for security information. A balance must be maintained between our quest for information and our collective quest for safety.

The Nigerians masses should learn how to put the Act to use as this will reveal the strength or otherwise of the powers of the Act.

References

- Abdullahi, M.H. (2011). The foi act and the craze for nation security. In *Journal of Conflict Management*. 1 (1) 17-22.
- Adekunle, M.C. (2012). The new foi Act in the face of national insecurity. In *International Journal of Communications and Peace Studies*. 9 (7) 1-16.
- Adeyemi, B.I. (2012). Evaluating the freedom of information act and national security. In *Journal of Media Studies*.10 (8).17-33.
- Andossar, E.C. (2011). An analysis of the foi Act and the security of Nigeria. In *International Journal of Conflict and Media Studies*. 6 (4) 1-14.
- Creswell, J. (20002). *Educational research: planning, conducting and evaluating quantitative and qualitative research*. New Jersey: Pearson Education Inc.
- David, O. M. (2011). An analysis of the foi act and it's implication for national security. In *Journal of Journalism Studies*. 7 (3), 1-17.
- Freedom of Information Act 2011
<http://tribune.com.ng/index.php/opinion/41917-foi-act-has-anything-changed>
- Isa, H.M. (2012). The freedom of information act and Nigeria's drive to national security. In *Journal of Journalism and Conflict Resolution*. 3 (1) 34-45.
- Jack, A., and Post, E. (2011).Freedom of Information laws and governments of the third word. *Journal of Social Studies* 4 (9), 49-72
- Kemi, O.C. (2012). Journalists' perception of the foi act visa-vis national security. In *Journal of Terrorism and Peace studies*. 13 (11), 61-75.
- Kene, O.A. (2012). The freedom of information act and Nigeria's national security. In *Journal of Policy and Strategic Studies*. 3 (2), 1-15.

- Njoku, A.E. (2011). The law and the need for national security. In *Journal of Communications and Research*.13 (11), 71-87.
- Nnoli, O. (2006). *National security in Africa: A radical new perspective*. Enugu: PACREP Book Services.
- Obi, E.D. (2012). The freedom of information Act and national security: Evaluating the exemption clauses. *Journal of Media Studies*. 7 (5) 46-58.
- Okafor, M.A. (2012). The role of the foi act in building national security. In *International Journal of Research and Security Studies*. 4 (3), 21-38.
- Okoro, I. (2012). *Freedom of information law and the state*. A paper presented at MMD Conference in Kaduna.
- Olisa, W.B. (2012). Assessing the potency of the foi act in national security. *Journal of Law and Government* 2 (1) 82093.
- Oyedokun, A. (June 2012). Foi act: Has anything changed? Retrieved from
- Rotimi, S.A. (2012). Is the foi act a threat to national security? In *Journal of Peace and Conflict Resolution*1 (91) 1-16.
- Umeh, J. (2009). *Official secret act: Secret evil*. A paper presented at SIFE National Conference, Abuja. 12-14 May.

NGWU, C. CHRISTIAN: Senior Lecturer, Department of Mass Communication, Enugu State University of Science and Technology, Enugu. chelasuniverse@yahoo.com.

ANORUE, LUKE IFEANYI: Senior Lecturer, Department of Mass Communication, University of Nigeria, Nsukka. anorue687@yahoo.com

MAKATA, CHARLES C: Lecturer, Department of Mass Communication, Renaissance University, Ugbawka, Enugu State Nigeria +2348061541945

EKWE OKWUDIRI C: Lecturer, Department of Mass Communication, Renaissance University, Ugbawka, Enugu State Nigeria. ekweokwudiri@yahoo.com