

The Nigerian Freedom of Information Act (FOIA) and its Implications for Counselling Practice

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Abstract

The citizens' right to access information without hindrance is a major hallmark of democracy. It supports the right to Freedom of Opinion and Expression as enshrined in the Universal Declaration of Human rights (1948). The enactment of Freedom of Information in Nigeria in 2011 does seem to have domesticated this provision. Its ramifications could be felt in different areas. Counselling practice in Nigeria is at the fore front of shaping peoples' lives and by extension it shapes the society as well. The enactment of Freedom of Information Act (FoIA) in 2011 does seem to provide a heightened platform for public scrutiny of counselling in Nigeria. Counselling is a forum that generates a lot of personal information that is often stored as clients' records. If counsellors are seen as record managers or clients' information managers and are also used to words such as "confidential", "restricted", or "fiduciary relationship" which make divulging of clients' information to be a regulated issue, then counselling practice in Nigeria cannot be oblivious of the possible implications of the Freedom of Information Act. This article reviews the Freedom of Information Act as enacted by the National Assembly and also discusses its possible implications for counselling practice in the country. The implications were discussed within the domains of counsellor education in Nigeria, code of ethics, counsellors' accountability, and risk management.

Keywords: counselling practice, freedom of information act, counsellor, accountability, Nigeria

Introduction

Undoubtedly, there are certain indices of democratic governance that supposedly make democracy the most acceptable way of governance in the world. Such indices include but not limited to freedom of speech and association and the right to know. The public cannot exercise the right to know if freedom of information is not a fundamental prerequisite of democratic governance. This explains why different democratic governments in the world and Africa in particular chose to endorse

freedom of information as a way of making public records and information available and accessible to the general public. For example, Freedom of Information Act was officially signed into law in 2000 by the South African government, and Uganda and Liberia finally endorsed it in 2005 and 2010 respectively (Omotayo, 2015).

Brief history of Freedom of Information Act (FoIA) in Nigeria

Being a member of the United Nations, Nigeria invariably subscribes to its resolutions and Charter on human rights. As a response to the devastating effects of the Second World War, members of the United Nations (UN) adopted a resolution 59 (19) that affirmed the idea that freedom of information is a fundamental right of a person. This freedom ultimately includes the right to seek, receive and impart or disseminate information, and the right to access information held by public authorities (United Nations UDHR, 1946). This scenario was never realized in Nigeria until recently. It must be noted that Nigeria was under military rule for several years until 1999 when democratic governance was restored. One of the casualties of military rule in most places is suppression of press freedom and by extension, information dissemination.

Military governments always seem to be afraid of information dissemination. It is not surprising that several decrees could be used to suppress citizens' demand for access to information and records from official government ministries and organizations. The press hardly fares well under military dictatorships. It is, therefore, understandable that different successive military governments in Nigeria maintained a strong grip on information flow to the public through various decrees. For example, it was an offence for government workers and officials to reveal all types of information to the public according to the provisions of Official Secret Act, Federal Commission Act, Evidence Act, and some provisions in the Criminal Code and Penal Code (Osuiigwe, 2011; Inokoba, 2014). This was the prevalent scenario until civil society groups (Media Rights Agency, Civil Liberty Organization (CLO), and Nigerian Union of Journalists (NUJ) took the initiative to push for the enactment of Freedom of Information Act in 1990's. These bodies agitated fiercely for Nigerian citizens to have some legally enforceable right that will make for easy access to information within the government circles (Osuiigwe, 2011). Consequently, under the euphoria of having a democratically elected government in place in 1999, the proposed Act was presented officially to the National Assembly. Meanwhile, many who had hoped for a quick and easy passage of the bill came to the realization that an arduous and tortuous journey awaited the bill.

The bill actually did spend long arduous seven years before it was passed by the House of Representatives and by a consensus vote was also passed by the Senate in 2007. Unfortunately, however, the Act did not receive the much expected

presidential assent from the former president Obasanjo whose tenure ended in 2007. It took further advocacy visits, seminars, workshops, and meetings by some concerned bodies to raise more awareness and subsequently push government into signing the Act into law on May 28th 2011 by President Goodluck Jonathan (Ibharayi, 2015; Osuigwe, 2011). The signing of Freedom of Information Act (FoIA) into law became a milestone in the history of Nigeria. It became clear that the Nigerian citizens' right to know was finally guaranteed at last. Thus, information held by any public institutions could be made available on request to the public.

Overview of the Freedom of Information Act (FoIA)

Against the background that public access to the right information could be a herculean task as was obtainable before now, the Freedom of Information Act (FoIA, 2011) is a law that makes public records and information more freely available on request. In addition, it is a law that also seeks to protect any public officer from adverse consequences of having disclosed information without authorization. Regarding this protective stance, the law specifically stipulates *inter alia* in Section 27 (1) that:

Notwithstanding anything contained in the Criminal Code, Penal Code, the Official Secret Act, or any other enactment, no civil or criminal proceedings shall lie against an officer of any public institution, or against any person acting on behalf of a public institution, and no proceedings shall lie against such persons thereof, for the disclosure in good faith of any information, or any part thereof pursuant to this Act, for any consequences that flow from that disclosure, or for the failure to give any notice required under this Act, if care is taken to give the required notice

Specifically, the Act (FoIA, 2011) in Section 2 (1-3) stipulates *inter alia*:

- A public institution shall ensure that it keeps records and keeps information about all its activities, operations and businesses.
- A public institution shall ensure the proper organization and maintenance of all information in its custody in a manner that facilitates public access to such information.
- Essential records the public accesses include:
 - Classes of records under the control of the institution.
 - Manuals used by employees of the institution in administering or carrying out any of the programmes or activities of the institution.
 - Substantive rules of the institution.

- Statements and interpretations of policy which have been adopted by the institution.
- Final planning policies, recommendations, and decisions.
- Factual reports, inspection reports, and studies whether prepared by or for the institution.
- Information relating to the receipt or expenditure of public or other funds of the institution.
- Documents relating to names, salaries, titles and dates of employment of all employees and officers of the institution.
- Documents containing the name of every official and the final records of voting in all proceedings of the institution.
- Files containing application for any contract, permit, grants, licences or agreements.
- Files relating to reports, documents, studies or publications prepared by independent contractors for the institution.

The public institutions mentioned in the Act could possibly include areas or environments where professional counselling practitioners are found. It is a known fact that professional practitioners work in public institutions like schools and other workplaces like hospitals, correctional centres, and prisons. Being officers in these public institutions, they occupy strategic positions as those that handle private and intimate information of students, workers, and inmates of those institutions. Based on the above and other provisions of the Act, it is obvious that the law makes provisions for the public to adequately access records and information irrespective of the form or manner in which it is kept by those concerned (Osuigwe, 2011) and even provides the platform for the protection of whistle blowers who can help to identify public servants who are not doing the right thing (Anyanwu, Akanwa, & Ossai-Onah, 2013), and thus makes it possible for people to know only what they need to know (Aminu, Malgwi, Kagu, & Danjuma, 2011).

Professional practitioners who are offering their services in the public domain will have to learn how to practice under the provisions of the Act. Secrecy regarding information is being mitigated under the Act. It does seem to show that the culture of secrecy engendered by the Official Secret Act (OSA), Public Complaints Commission Act (PCCA), Evidence Act (EA), and Federal Commission Privileges and Immunities Act (FCPIA) may have been mitigated by the enactment of Freedom of Information Act (FoIA, 2011) as section 27 (1) of the Act seems to suggest. Meanwhile, Omotayo (2015) and Dawodu (2016) are of the opinion that these existing laws will rather undermine the effectiveness of FoIA because they have not been repealed or amended to avoid possible conflicts with the FoIA .

Meanwhile, the Freedom of Information as described above has already been noted to have some implications for public records and office security (Aminu, Malgwi, Kagu, & Danjuma, 2011) and national development (Anyanwu, Akanwa, & Ossai-Onah, 2013). Same analysis has not been carried out on its implication for counselling practice in Nigeria. It does become pertinent to also ask what implications the same Freedom of Information Act has for counselling practice in Nigeria. Our discourse below dwells on some possible counselling areas which the FoIA does have direct implications that need to be acknowledged.

Counsellor Education and Training

Counsellor education remains a very strong determinant factor for the quality of counsellors that are practicing in the field (Gignac, 2015; Hansen, 2003). As such, the content of the counsellor education has to be updated always to meet up with the recent developments in the society. The coming into being of the Freedom of Information Act in Nigeria has to be recognized by the counsellor education programme in the country. An adequate response will be to seek to understand and incorporate its provisions and nuances into the counselling education so that counsellors-in-training will begin early enough to understand the fact that the FoIA has made it possible for people or institutions to seek to have access to clients information or records. Therefore, the demands of the Freedom of Information (FoIA) touch directly on the ethical components of counsellor education (Remley & Herlihy, 2005). Counsellors-in-training will need to be trained to be not only good managers of clients' records and information, but also trained to be familiar with the known dimensions of counselling records that include ethical, legal, and clinical dimensions.

Counsellor education in Nigeria has to move beyond the usual heavy concentration on the theoretical explanations of clients' problems and skills acquisitions to the vital issue of creation and management of clients' information that is generated within the counselling process. Due to the fact that counsellors could actually possess information that may be of interest to the courts and security agencies, counsellors-in-training need to be well schooled and well informed about the power of the Freedom of Information Act toward accessing clients' information deposited with their counsellors. In other words, counsellors-in-training will have to be taught how to navigate ethically and legally in a litigious society as Nigeria. If what transpired in the counselling room could become anybody's business (Bearhrs & Gutheil, 2001), counsellor education in Nigeria cannot be oblivious of the fact that courts and security agencies that thrive in a litigious society could leverage on the provisions or stipulations of the FoIA to demand clients' records or documents from counsellors which may help them pursue the course of justice and security in the

society (Oramah, 2015). This possible scenario does necessitate that counsellor education in Nigeria should begin exposing trainee counsellors to proper creation and handling of clients' records (information), release of clients' records, storage of clients' records, clients' informed consent regarding their records and even possible destruction of clients' records as stipulated by the ethical code. Counsellor education in Nigeria must come to the realization that if Nigerians now have a vital tool (FoIA) to uncover facts and equally hold those that are working for the interest of the public accountable, then a denial of access to information by counsellors could amount to infringement of the law and possible prosecution.

Code of Ethics for Counsellors in Nigeria

A nagging drawback to the professionalization of counselling practice in Nigeria is the fact that the bill that seeks to legalise counselling practice in the country has not been passed into law. The current scenario shows that even though counselling is taught and also practiced by some professional counsellors in the country, it is still not yet a legally recognized profession. The implication is that if counselling is not yet a legally professionalized activity in the country, then no ethical code is in place to legally guide the activities of counsellors who are working in different institutions or in private practice. The reality is that while the FoIA is already operational and can be used to have access to the activities of a counsellor, the same counsellor does not have a legal code that should give him or her some directions as to how to deal with clients' records vis-a-vis those who might demand the same client record with the help of the FoIA. Toward circumventing this possible problem, counsellors-in-training and counselling practitioners would have to be informed that note-taking that forms part of a client's records does have not only ethical, professional, and clinical uses but also legal purpose as well (Purves, 2005). In addition, the lacuna regarding ethical code in such circumstances could also be circumvented with the help of personal ethics and agency policy (Bond, 2010). A counsellor that works in agency would be required to follow the specific procedures and protocols of the agency as a way of navigating ethical dilemmas that may possibly arise while discharging one's duties.

Counsellor's Accountability

It is noted that an effective implementation of the FoIA will promote the principles of transparency and accountability (Inokoba, 2014). In this case, accountability is a reference to appropriate display of professional responsibility that ultimately shows how the counsellor accounts for the services rendered to the individual clients and to the society. The counselling profession helps to shape peoples' lives and by extension the society at large. Under this atmosphere, the counsellor occupies a vital position which does make him or her to be responsible to the counselling profession, the client, and to the general public. Meanwhile, the existence of the FoIA has

further heightened the counsellor's accountability with reference to the client in particular and the society in general. It does seem to suggest that counsellors may now be required to show individual clients, government agencies, security agencies, and even insurance companies that their services are not only effective (Popescu, 2012; Miller, Hubble, Chow, & Seidel, 2013) but also that the records of their services are properly kept and maintained (APA, 2007; Bond, 2010; Remley & Herlihy, 2005; Purves, 2005; Cormier & Nurius, 2003, Luepker, 2003). Based on this understanding, a counsellor's accountability will be a function of proper record-keeping process. All clients' records in the custody of the counsellor can be subpoenaed by the law court in the pursuance of justice. Therefore, a sloppy record keeping could be problematic to the counsellor.

Risk management

If the public access to information in the country has been made easier by the FoIA, counsellors might need to begin to give serious thought to the deployment of some risk management strategies as a way of enhancing one's counselling practice. The greater percentage of the risk management practices will have to be directed toward proper management of clients' information and records (Bond & Mitchels, 2008) and more importantly carrying our risk-cost and benefit analysis as a managerial action toward safeguarding clients' information (McLeod, 1998; McGrath & Lawson, 1986). While guaranteeing the right of access to information to everyone in the country, the Freedom of Information Act places enormous responsibility on those who hold information in Nigeria.

A counsellor is a manager of clients' information. Therefore, if the FoIA has liberalised information seeking and dissemination in Nigeria, then a counsellor's management of clients' information does require some extra risk management measures that make for proper storage, retrieval and usage of client's information within the provisions of the ethical code. Risk management in this context would mean maximization or optimal utilization of client's information and a corresponding minimization of damages, losses, and unauthorised access to clients' information (Nawayo, Medugu, & Mukhtar, 2008). Invariably, despite the demands of the FoIA regarding access to information, the counsellor has to consider and also factor in the recommendations and provisions of the ethical codes on the release of clients' information so as to avoid being slammed with malpractice charges. Some practical measures that might serve the interest of the counsellor as risk management measures under the FoIA atmosphere include but not limited to the following:

- Explaining to all clients ab initio that there is a limit to the confidentiality of their records or information. In other words, a client could be informed that there are conditions that may require a partial or a total disclosure of

their records to a third party that may include the court, police, parents, or school authority. Securing the consent of the client on these areas is a safeguarding valve for the counsellor.

- Another possible risk management strategy under the atmosphere of the FoIA is a counsellor taking out professional indemnity insurance or a public liability cover. This is aimed at guarding against losses or damages to clients' records. It has been observed that a counsellor could inadvertently cause psychological harm to clients through error, omission or malpractice which may warrant being sued by clients (Syme, 2000).

What is implied here is that counselling practice does need to be carried out with constant recourse to the regulations of the rules or codes governing counselling practice. Such disposition is even more appropriate now that the FoIA has come into existence as a further instrument of ascertaining or scrutinizing the activities of those who work for the interest of the general public. Counselling profession provides both private and public services. If counselling helps to shape the behaviours of individuals or groups of people, it invariably helps to shape the conduct of people in private as well as in public settings. Thus, the interest of the public toward what the counsellor does could have been heightened by the power of the FoIA.

Conclusion

The enactment of the Freedom of Information Act (FoIA) by the government of Nigeria in 2011 did signal a new approach to the way information is managed in Nigeria. It opened up the space for Nigerians to exercise their fundamental right to know, to be well informed; which is one of the characteristics or hallmarks of a functioning democratic society. In view of the fact that information management is also at the heart of the counselling service delivery, the Freedom of Information Act does have some implications for counselling in Nigeria. Our discussions above shows that the FoIA does have some impact on the way counselling will be practiced in Nigeria in the areas of client's records or information, counsellor education, counsellors' accountability outlook, and risk management appetite of counsellors.

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