



From Legal Right to Institutional Reality: Freedom of Information Act, Public Records, and Investigative Access in Nigeria

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Abstract

Institutions still severely restrict access to information, even under the Freedom of Information Act, through political manipulation, corruption, and systemic non-compliance. Drawing on conceptual analysis and theoretical synthesis, including Libertarian and Authoritarian theories of the press, the paper argues that while the legal architecture supporting information rights exists, its practical implementation is severely undermined. Government agencies routinely ignore FOI requests, journalists face persecution and physical harm, and civil society organisations struggle to fill the accountability gap. The paper recommends strengthening FOI enforcement, reforming public institutions and the civil service, and enacting legislation protecting investigative journalists, and argues for a shift in the relationship between the public and public institutions toward a more libertarian orientation.

Keywords: FOIA, resistance, investigative journalism, public document, accountability

Introduction

The citizens' right to know connotes that investigative journalists gain freedom to access information and public records (Aondover et al., 2024). This right is an essential element of freedom of opinion and expression, human rights, trust in public discourse, and transparent, accountable, and open government (Shepherd, 2015). Like the right to life and dignity of the human person, the right to know or the right to seek, receive and transmit information is a legal privilege constitutionally granted to citizens in most nations and is recognized as a Fundamental Human Right (Agba et al., 2018). Emphasizing this importance, Omotayo (2015) stressed that a key element for people to contribute fully to society is access to information; citizens require detailed, accurate information about government activities to make meaningful contributions to policy, planning, and development. Dunu and Ugbo (2014) trace this right to Article 19 of the 1948 Universal Declaration of Human Rights (UNDHR), which guarantees freedom of opinion and expression, including the freedom to seek, receive and impart information and ideas through any media, regardless of frontiers.

This right becomes meaningful only when citizens can practically obtain information held by public institutions (Shepherd, 2015). It is this practical element; access to public records that gives content to the abstract right to know. Governments generate and hold enormous quantities of records in the course of their administrative activities, and the extent to which citizens may inspect, request and use these records determines whether the right to know is a lived reality or a mere constitutional promise (Saroki & Schulkin, 2016). Freedom of Information (FOI) legislation is the principal legal mechanism by which states bring to life this access, transforming a general privilege to information into an enforceable procedure for requesting records from public agencies (Omotayo, 2015).

Tracing Nigeria's constitutional history from the 1960 Independence Constitution through the 1999 Constitution (as amended); has consistently recognised human rights, including freedom of expression (Salman & Oniekoro, 2015). This constitutional foundation was strengthened in



2011 when the Freedom of Information Act (FOIA) was signed into law, guaranteeing public access to records held by public institutions and officials (Oberiri, 2016; Freedom of Information Act, 2011). The Act stroke a significant change from an era in which the activities of public institutions were covered in secrecy (Agba et al., 2018), protected by instruments such as the Official Secrets Act and the Criminal Code, and in which government documents were routinely withheld from public view unless voluntarily released (Imosemi, 2015).

The Journalism institution requires freedom for efficient functioning, serves as the watchdog of society, providing information, enlightenment and socialisation (Omotayo, 2015). This social function depends on the efficacious flow, access to, and use of information (Omotayo, 2015), enabling the media to hold both authoritarian and libertarian governments accountable to the governed (Oberiri, 2016). Press freedom is therefore essential not only to journalism's watchdog role but also to a nation's democratic and economic health (Omotayo, 2015). Investigative journalism, in particular, depends on access to authoritative public records to uncover corruption, expose human rights violations, and hold power accountable (Aondover et al., 2024; Testa, 2025); FOI legislation is, in principle, the tool that should make such access routine rather than exceptional.

Despite more than a decade of implementation, scholars argue that Nigerians are yet to witness the full impact of the FOIA; the law has been widely criticised as underutilised, poorly enforced, and frequently ignored by the very government agencies it is meant to bind (Oberiri, 2016). While, Public institutions routinely fail to respond to information requests within the statutory timeframe (Media Rights Agenda, 2019), this has driven citizens and civil society organisations to seek judicial enforcement through the Federal High Courts, though slow and costly, has demonstrated that compliance can be compelled (SERAP, 2021). The Act's impact is even more limited at the state and local government levels, where only a handful of states have passed freedom of information legislation and the vast majority of Nigeria's 774 local government councils show little awareness or adoption of the law (Asogwa & Ezema, 2017).

Existing scholarship on Nigeria's FOI regime has documented these implementation failures extensively, ranging from legal, institutional and financial barriers to access (Okogbule & Kokpan, 2024). However, a systematic theoretical interpretation of why an officially libertarian legal instrument continues to operate within an institutional culture that behaves in fundamentally authoritarian ways remains comparatively underexplored. Most prior studies describe the gap between the FOIA's promise and its practice empirically, without situating it within a normative theoretical framework capable of explaining its persistence. This paper addresses that gap by reading Nigeria's public records regime through the lenses of Libertarian and Authoritarian press theory (Siebert et al., 1956), arguing that the country's information space is best understood as a place of conflicting legal libertarian aspiration and an operationally authoritarian institutional practice. Therefore, the paper contributes a theoretical explanation rather than a purely descriptive account of why Nigeria's formal recognition of the public's right to know has not translated into the practical realisation of investigative access.

Problem statement

To effectively function as the watchdog of society, reliable access to information on public expenditure, procurement processes, revenue flows, and policy decisions must be guaranteed to journalists, civil society organisations, and the public (Schedler, 1999). Where information is not accessible, corruption thrives, and government's promise of accountability to citizens is



undermined at its core (Transparency International, 2023). The investigative access of journalists is contended with bureaucratic refusals to disclose information, legal harassment, physical threats, digital surveillance, and financial intimidation (Reporters Without Borders, 2023). This paper therefore raises the concern as to whether the Nigerian public, and journalists in particular, have adequate right to know, to access information, or to contest with government in respect of these rights.

Do the media understand their rights under the FOI Act, or even have a passing idea of how a request might be framed? Several other questions beg attention: Since the enactment of the law, has there been a noticeable improvement in the way public records are accessed? Are there more cases of in-depth investigative journalism being undertaken? Are the Nigerian media ensuring that the Nigerian public maximises the benefits of the Act by taking the lead in approaching governmental agencies and organisations for information they need to do their work? These questions are germane to this study given that the trend that currently pervades practice remains the popular culture of 'business as usual', without any significant change. Given these perceptions and observations, this study interrogates whether and how the Nigerian public and journalists, at this dawn of ostensibly unrestricted access to 'seek and say' virtually any information, are rising to the challenge of this new phenomenon.

Theoretical Foundation

This study is anchored on two normative theories as complementary and competing lenses, simultaneously acknowledging natural rights, social duties, and public entitlements; a bilateral framing that captures the complexity of citizens' right to know.

Libertarian Theory of the Press

The Libertarian Theory holds that the press should be free of any kind of government control and should serve as an 'open market of ideas' where every perspective and opinion strives spontaneously for acceptance (McQuail, 1987). The theory draws on Enlightenment philosophy, particularly the nineteenth-century arguments of Milton and Mill, that if all mankind except one person held the same opinion, mankind would be no more justified in silencing that one person than that person would be justified in silencing mankind (Macdonald, 2023). This provided a foundation for freedom from government control, a free market of ideas, a watchdog role over government, and the public's right to receive diverse information and opinions; ultimately, truth prevails in an open contest of ideas, and freedom of expression; including freedom to access and disseminate information is treated as a natural right that governments may not legitimately infringe.

The theory has been applied extensively in scholarship examining the normative basis of press state relations (Siebert et al., 1956), and it strongly supports the right to information and public records, advocating for rights to access government information, reduced government secrecy, and enhanced protection for journalists and the public. The culture of secrecy, bureaucratic information hoarding, and persecution of investigative journalists by government officials and institutions represent fundamental violations of natural rights, undermining rational self-governance and free democracy (Ogbondah, 2004). However, the libertarian model has been criticised for its failure to account for structural conditions such as economic inequality, media concentration, and political subjugation, which shape actual information access regardless of formal legal guarantees (McQuail, 1983). For the present study, the theory is relevant because it



supplies the normative standard unrestricted access to government-held information against which Nigeria's FOIA and its implementation can be evaluated.

Authoritarian Theory of the press

The Authoritarian Theory, elaborated by Siebert, Peterson and Schramm (1956), holds that the press exists to serve and advance the interests of the state and those in power. Under this framework, government exercises direct or indirect control over the media, information is regarded as an instrument of state authority rather than a public resource, and the free flow of information is subordinated to the imperatives of order, stability, and the preservation of established power (Siebert et al., 1956). Citizens, within the authoritarian framework, are treated as subjects of the state rather than sovereign rights-holders, and access to information is granted only to the extent that it serves the interests of the ruling elite (McQuail, 1987).

Nigeria's information space, from the colonial period through successive post-independence military governments, closely reflects the authoritarian press model: the state monopolised information, suppressed dissent, enacted sweeping official secrecy legislation, and treated journalism as a tool of government communication rather than a mechanism of public accountability (Ogbondah, 2018). This authoritarian orientation remains visible in the bureaucratic resistance to information disclosure that persists despite Nigeria's formal transition to democratic governance, and it provides a critical explanatory lens for understanding why the FOIA has struggled to dislodge deeply embedded patterns of secrecy (Obijiofor & Hanusch, 2017). The theory has, however, been criticised for treating state control as static and totalising, thereby underestimating the agency of courts, civil society, and reformist actors in contesting secrecy even within institutions that retain authoritarian habits (Obijiofor & Hanusch, 2017). For this study, the theory is relevant because it explains the persistence of bureaucratic secrecy that the libertarian framework alone cannot account for; the Authoritarian Theory does not merely describe a historical episode it illuminates the ideological substrate on which contemporary bureaucratic resistance to information rights continues to rest.

These frameworks are relevant to the study, while the Libertarian framework supplies the normative standard by which government institutions and the press should serve the public interest through transparent and accountable information practices, and provides a basis for critiquing government restrictions. The Authoritarian framework, by contrast, explains the historical and structural baseline of Nigeria's information environment, clarifying why bureaucratic secrecy persists and why official attitudes toward information access remain fundamentally hostile despite formal democratic reforms. Together, these theories underscore that information rights are simultaneously natural rights, social obligations, and participatory entitlements a two-sided framing that captures the full complexity of the right to know in a country like Nigeria.

Methodology

The paper based on desk research approach, adopted a conceptual and theoretical design suitable to studies that synthesise and interpret existing secondary literatures rather than generate new primary data on public records access, Freedom of Information implementation, and investigative journalism in Nigeria, examined through the Libertarian and Authoritarian theories of the press; sources were drawn from peer-reviewed journal articles, institutional and civil society reports, statutory instruments, and scholarly books addressing Nigeria's information access system. These were retrieved through academic databases and repositories including Google Scholar, African Journals Online (AJOL), SSRN, and institutional repositories, supplemented by reports



from Media Rights Agenda, SERAP, Transparency International, and Reporters Without Borders. The retrieved literature was thematically analysed and organised around the study's guiding theoretical sections; information openness and secrecy, formal information rights, investigative access, and institutional barriers; before being synthesised into the theoretical argument developed in the discussion that follows.

Theoretical Synthesis and Application

Information Openness and Institutional Secrecy

The bureaucratic culture in Nigeria is fine-tuned by a complex interaction of colonial inheritance, post-independence patronage politics, and the distortions introduced by decades of military rule (Ogbondah, 2004). Governments receive and generate an enormous quantity of information, part of which is available for public access, while a large amount remains hidden from public view (Saroki & Schulkin, 2016), and this information is systematically withheld by institutions at all levels of governance (Media Rights Agenda, 2019). The libertarian expectation is that the introduction of the FOIA would free Nigerians from the shackles of restrictive rules and legislation; in practice, the effectiveness and productivity of government depends on how well records and information are generated, processed and disseminated, since these records are vital not only for decision-making but also for accountability and continuity in government business (Abioye, 2010).

Additionally, a systematic secrecy manifests as outright refusal to respond to information requests, the provision of incomplete or misleading information, and the strategic management of information to give the appearance of transparency while withholding substantive content (Ojo, 2015; Aminu, et al, 2011). Since the colonial era, various laws have operated to protect classified information and official secrets in the public service, including the Official Secrets Act, the Public Service Rules, and the Criminal Code Act (Abioye, 2010). Okogbule and Kokpan (2024) argue that President Bola Ahmed Tinubu further complicated information access by signing into law the Nigeria Data Protection Act 2023, which establishes the Nigeria Data Protection Commission (NDPC) in place of the former Nigeria Data Protection Bureau (NDPB). These provisions, combined with the Civil Service Rules of 2006 and the Criminal Code, make information access considerably more difficult, reinforcing the authoritarian pattern of institutional secrecy identified above.

The Right to Know and FOI as a Formal Information Right

Information is the stimulus that motivates people to form opinions and take action (Imosemi, 2015); the right to know is therefore fundamentally a human right (Agba et al., 2018). The 1948 Universal Declaration of Human Rights (UDHR) and subsequent conventions, treaties and protocols entrenched human rights through the twentieth century and beyond (Salman & Oniekoro, 2015). Among these rights is the public's right to know, a multidimensional and evolving democratic entitlement; this right to know constitutes a broader right to freedom of expression and information under Article 19 of the UDHR, which includes the right to seek information, not merely to receive it (UN, 1948; Testa 2025).

Generally, Shepherd (2015) recounts that the idea of freedom of information began to be adopted by national governments from the 1960s, and today more than 100 countries across Europe, Africa, Asia and the Americas have such legislation, viewing it as an essential element of citizens' freedom of opinion and expression. As Agba et al. (2018) explain, the public have the right to know how their representatives in government are discharging the mandate given to them,



and such transparent governance can only be guaranteed by statutory legislation that clearly specifies who may access what information, from whom, and through what means the objective that FOI law is meant to fulfil, ultimately enhancing press freedom by guaranteeing access to public records held by public institutions.

Relatedly, FOI legislation addresses the shortfalls of earlier secrecy-oriented laws by introducing legal provisions that acknowledge, warrant, safeguard and encourage the public's right to access public records (Adebayo & Akinyoade, 2011). Asogwa and Ezema (2017) trace the historical roots of FOI law to Sweden and Finland, where it has existed since the eighteenth century; the United States adopted similar legislation in 1966, followed by Denmark and Norway in 1970, and France, the Netherlands, Canada, New Zealand and Australia in 1982. The United Kingdom's Freedom of Information Act 2000 came into force in 2005 (Shepherd, 2015). South Africa led the African continent in 2000, followed by Angola and Zimbabwe in 2002, Ethiopia in 2008, Liberia in 2010, and Niger, Tunisia and Nigeria in 2011, with Rwanda, Sierra Leone and Côte d'Ivoire following in 2013 and Sudan in 2015 (Asogwa & Ezema, 2017). In Nigeria, the law is known as the Freedom of Information Act 2011, and it supersedes other laws that restrict access to public records, including the Official Secrets Act formally institutionalising, in law, the libertarian expectation of open information access.

FOI and Investigative Journalism

Freedom of Information, or access to state held information, refers to the citizen's right to access information held by government (Omotayo, 2015). A network of 180 civil society organisations under the umbrella of the Freedom of Information Coalition developed the bill that was debated for over a decade in the Nigerian National Assembly (Duru, 2016), the longest debate in the Assembly's history, culminating in a bill first introduced in 1999 and finally passed and signed into law by President Goodluck Jonathan in 2011 (Ojo, 2015). The Act's objectives are to make public records and information more freely available, to provide for public access to public records, to protect such records to the extent consistent with the public interest and personal privacy, to protect public officers from adverse consequences for authorised disclosure, and to establish procedures for achieving these purposes (Adebayo & Akinyoade, 2011), thereby striking a balance between transparency and privacy, security, and administrative confidentiality (Ojo, 2015).

The enactment of the FOIA made information more available to the public and particularly to journalists, with the expectation of improving the accuracy of information and the quality of media practice (Egielewa, & Aidonjio, 2021; Oberiri, 2016). Nigerian journalists now practise with somewhat greater latitude in many kinds of coverage than before the Act (Agba et al., 2018), and although ambivalence persists, the press has experienced a measure of improvement (Dunu & Ugbo, 2014). Coronel (2001) nonetheless shows that Nigerian public institutions are not consistently open and transparent in releasing information; agencies such as the NNPC have been known to block access outright. Although the FOIA is clearly understood and valued by Nigerian journalists as a tool that can enhance their practice particularly its investigative dimension, the Act is not yet routinely applied in the day-to-day practice of journalism in Nigeria (Dunu & Ugbo, 2014).

Access to information from government agencies is essential to the media's work (Oberiri, 2016), and journalists require specialised training to discharge their investigative duties effectively; investigative journalism means reporting on matters of importance that are kept secret



by persons or organisations (Aondover et al., 2024). This practice is vital in uncovering corruption, exposing human rights violations, and holding those in authority accountable (Egielewa, & Aidonjio, 2021). Despite the prospects the FOIA offers, the sustainability of investigative journalism in Nigeria remains uncertain, constrained by limited access to information, legal harassment, police violence and arbitrary arrest, loss of advertising revenue, self-censorship, and digital surveillance by security intelligence (Oberiri, 2016; Asogwa & Ezema, 2017; Aondover et al., 2024). To improve investigations, particularly criminal investigations, Ladapo (2011) suggests improved funding, legislative intervention, policy change, structural reform, personnel training, and non-governmental stakeholder intervention. The disbandment of the Special Anti-Robbery Squad (SARS) illustrates the potential of this investigative capacity: Amnesty International (2020), in collaboration with local media, investigated the unit's activities and uncovered a pattern of extrajudicial violence, torture and extortion that fuelled the #EndSARS protests of 2020 and ultimately compelled the Nigerian government to disband the unit.

Institutional and Journalistic Barriers to Investigative Access

Fundamentally, several challenges confront the public's right to information and, by extension, investigative journalists in Nigeria. Egielewa and Aidonjio, (2021), report that many institutions either entirely ignore requests or cite broad exemptions in their responses. The following constitute the principal challenges to accessing information and public records.

- **FOIA Implementation Challenges:** The Act lacks a clear and precise implementation roadmap and overlaps uneasily with other laws in the country. Okogbule and Kokpan (2024), Agba, et.al, (2018) highlight uncoordinated enforcement mechanisms, sweeping exemption provisions, jurisdictional uncertainty, and delays in litigation as key obstacles, while Adebayo and Akinyoade (2011) identify misconceptions of the FOIA as a press only law, judicial reluctance to enforce it, inadequate public awareness, an entrenched culture of secrecy in public service, and poor record-keeping as further barriers to full implementation.
- **Denial of Access to Information:** Requests to access public records are frequently ignored, pushing investigative journalists toward informal sourcing through personal contacts within government agencies rather than formal FOIA requests, which are often denied outright. Egielewa, & Aidonjio, (2021), identify information access as the single greatest challenge to journalists' investigative work. According to Ufuohu (2008), Nigerian journalists are not lacking in intellectual capacity; rather, fear, complacency and a complex sense of inferiority are among the major hindrances to investigative journalism.
- **Financial Constraints:** Sustainable investigative journalism and public access to information require adequate time, travel, data tools and legal advice, all of which cost money that is increasingly difficult to rise through advertising revenue alone. This requires new funding models, including support from philanthropies, reader subscriptions, and syndicated investigative partnerships.
- **An Uninformed Public:** Beyond the need to train and retain journalists in the utilisation of the FOIA, without which investigative skills atrophy the public also requires adequate sensitisation and orientation concerning the Act's provisions and administration (Bosumi & Shadrach, 2025; Omotayo, 2015).
- **Political Pressure and fear of retaliation:** Direct or indirect political pressure is mounted on government agencies to subdue or adjust official reports, and journalism faces a similar



fate (Ogbondah, 2004). This pressure is multifaceted: direct contact by officials demanding retraction; pressure on agency heads, editors and media owners by politicians; the revocation of, or threats to revoke, licences by the National Broadcasting Commission (NBC); and the use of state security agencies to monitor, detain or intimidate journalists all of which create structural vulnerabilities that undermine information access (Bosumi & Shadrach, 2025).

Theoretical Synthesis

The evidence assembled in the preceding sections reveals a consistent structural pattern: Nigeria's legal architecture is libertarian in form but authoritarian in operation. The FOIA of 2011 embodies the libertarian conviction that information is a public resource to which citizens are naturally entitled, and that government secrecy is presumptively illegitimate (Siebert et al., 1956; Adebayo & Akinyoade, 2011). Yet the institutional behaviour documented across public records management, FOI implementation, investigative journalism practice, and the barriers confronting journalists and citizens alike reproduces the core assumptions of the authoritarian model: information is treated as an instrument of institutional self-preservation rather than a public entitlement, and access is granted or, more often, withheld according to the interests of those who hold it (McQuail, 1987; Ogbondah, 2018).

This is not simply a gap between law and practice; it reflects two different values operating simultaneously within the same institutional space. The libertarian logic is inscribed in statute, in judicial precedent (SERAP, 2021), and in Nigeria's constitutional commitments to freedom of expression, while the authoritarian logic persists in bureaucratic culture, official secrecy legislation, and the everyday discretion exercised by public officials deciding whether, and how, to respond to information requests (Ojo, 2015; Okogbule & Kokpan, 2024). The central theoretical argument advanced here is that Nigeria's public records regime cannot be adequately explained by either theory alone: the Libertarian framework accounts for the normative and legal aspiration embodied in the FOIA, while the Authoritarian framework explains the institutional resistance that continually frustrates that aspiration. The persistence of this difference, rather than the dominance of either theory alone, is the defining feature of Nigeria's information environment, and it is this conflicting situation that must be addressed if the formal right to know is to be translated into the practical reality of investigative access.

Conclusion

This analysis demonstrates a persistent dichotomy in Nigeria between the formal recognition of the public's right to know and the institutional conditions necessary to realise that right in practice. Evaluating public records access, FOI implementation, and investigative journalism through the complementary lenses of Libertarian and Authoritarian press theory shows that the information corridor in Nigeria is not simply a case of an unenforced law, but a structural contest between a legally libertarian aspiration and a persistently authoritarian institutional culture rooted in colonial administration, official secrecy legislation, and bureaucratic self-protection (Constitution of the Federal Republic of Nigeria, 1999; Freedom of Information Act, 2011; UN, 1948). Investigative journalism; the practice most dependent on the practical realisation of this right remains constrained by legal harassment, financial instability, and political pressure, undermining its capacity to deliver the public accountability that ordinary reporting cannot provide. As supported by libertarian press theory, any democratic setting in which citizens cannot access information about how they are governed is only a fictional democracy.



Implications

Theoretically, this differentiating circumstance implies that future scholarship on Nigeria's information dialogue and practice should move beyond documenting non-compliance and instead interrogate the institutional incentives that sustain authoritarian information practices within a formally libertarian legal architecture. Practically, it implies that enforcement mechanisms, rather than further legislative amendment, are the most immediate lever available for closing the gap between right and practice. Professionally, it implies that journalists and civil society actors require not only legal literacy but also institutional and financial support to convert formal access rights into sustained investigative capacity.

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AI Use Disclosure:

Grammarly was used to fine-tune spelling, concord, and the overall grammar in the article, while Perplexity was used to check the correctness of the references (APA 7th Edition)
