

## **FOI in Nigeria Health Sector – Understanding the issues & need for appraisal and education.**

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**Abstract:** The lady Helen child health foundation research group in a questionnaire based study decided to test the FOI Act 2011 in action by sending out request to selected health institutions within the federal capital territory. This is primarily to test their understanding of some provisions of the FOI Act 2011 in relation to response time, provision of non exempt information, their interpretation of relevant sections of the act or misinterpretations, and to check the accuracy of received information against available national data.

The analysis of the responses indicates a clear disparity in understanding and interpretation of the provisions of the FOI Act. Some Institutions gave different interpretation to the same article of the FOI Act. There was a general perception that the lack of visible sanctions gives an impression that the officials deliberately fail to adhere to the principles of the FOI Act 2011.

There is therefore the need for re-education of public workers on the need to implement correctly the provisions of the Act.

The Ministry of Health (MOH) should be aware of the need to correctly implement the articles of the FOI Act and put arrangements in place to address the inept actions of some its agencies in relation to the correct implementation of the Act.

## Introduction

The Lady Helen Child Health Foundation LHCHF held a conference in October 2019 on the theme: **“Facing the Challenges of Delivering Healthcare to Vulnerable Children in Nigeria – Real Need to Entrench Good Governance in the Health Sector”**, with a Master class that discussed the delivery of workable solution to address the Maternal New-born and Child Health Emergency declared by the Government as well as the solutions to challenges in caring for children by the Primary, Secondary and Tertiary care providers in Nigeria.

The conference provided a platform and an opportunity to engage with key policymakers and stakeholders in the Health Sector. In addition, to also discussing the impact of entrenching best practices in Child Health Services, such as key issues for prevention focused healthcare with the best steps for tackling health inequalities at local level on Vulnerable Children. The discussion appraised the strata of the Nigeria Healthcare system (Federal, State and Local), Health care financing, and the Referral system, private sector as well as the Challenges of the healthcare implementation. This provided insight into the health indices of the Country which were appalling.

It is against this background that a follow up research activity was carried out to collect information and data directly from healthcare facility and government institution to compare with the data and indices presented at the conference for analysis.

Information sharing and gathering is the pivot on which adequate planning and execution of projects and policies stands and also offers the stake holders an understanding of the direction of how their collective resource is spent or disbursed. In case of health provision this means quality, safety and clinical effectiveness.

Freedom of information therefore infers that there is the guarantee that some information deemed appropriate and that is not restricted in relation to need, can be shared.

When the Freedom of information (FOI) Act 2011 was passed and signed into law by the then President Jonathan, most people believed it as a step in the right direction and an action that will move Nigeria forward in its developmental strides.

This expectation has so far not addressed the issues that the FOI act was meant to resolve.

The present level of understanding indicate the lack of useful information about the number of children dying in hospitals, the accurate staffing levels for nurse and doctors who care for children within the Federal Capital Territory (FCT),

There is no indication that the Federal Ministry of Health is capturing or getting regular accurate returns of these vital statistics. These data are measures of the quality of provision to this group of patients.

It is strongly believed that to advance best quality practise we need to have information on possible outcomes hence the need for LHCHF to apply to relevant institutions for the information. There is a proven link between staffing numbers, bed numbers, deaths in hospital and refusal of admission on the level of clinical effectiveness in practise.

It is important to rely on data to power the health engine of the Nigeria health sector as a transformation agent. Therefore the collection and creation of an enabling environment for this to occur will definitely help policy improvements and implementation by user reliance and trust. FOI requests should be seen as an essential vehicle needed to improve health care governance.

In its commitment to advocacy on behalf of children, the lady Helen child health foundation research group in a questionnaire based study decided to test the FOI Act in action by sending out request to selected health institutions within the federal capital territory. This is primarily to test their understanding of some provisions of the Act in relation to response time, provision of non exempt information, their interpretation of relevant sections of the FOI Act 2011 and to check the accuracy of received information against available national data.

FOI is a valuable tool to public health practitioners as an aid to advocacy, means of impacting and helping public health advocacy and helping to fashion transparency and accountability within government machinery ( practice & policy making)<sup>1</sup>

However if FOIA 2011 is not properly understood and used, it may be construed as an instrument for withholding rather than a statute for disclosure.

Clear understanding of FOIA's real purpose and usefulness will enable health workers, researchers, and NGOs to utilise this avenue to obtain information about important health data which can help to advance the advocacy work of all backgrounds and ideologies to support government policy making and implementation. Public health workers can use this avenue to promote transparency and accountability in governance by being responsive to the dictate of the relevant provision of the FOIA 2011 by acting promptly, responding to requests and demonstrating good understanding of its provisions, by applying the exemption clauses appropriately.

**Research was approved by the Lady Helen Child Health Foundation management governance.**

## **METHODOLOGY:**

Questionnaire based study applied prospectively to 5 institutions in the federal capital territory area. These were made up of secondary and tertiary medical institutions and one sent to the National Health Insurance body.

Four questions making up the request include;

1. The number of paediatric admissions to the wards in the 3 years 2016,2017 & 2018
2. The staffing level of paediatric nurses and paediatric doctors in the hospital in question.
3. The number of recorded deaths of children in the hospital in 2016,2017 & 2018
4. The number of children who could not be discharged home for failure to meet the hospital bills

One question only was posed to the National health insurance;

1. How many disbursements or uptake has been done to children between the ages of 0 – 18 years in the years 2016, 2017 & 2018?

## **Data Collection**

By the virtue of the Provision of the Freedom of Information Act 2011, The Foundation requested for the following information and data through hand delivered written applications for further analysis:

- i. The number of paediatric admissions to wards in the last 3 years
- ii. Staffing number of paediatric doctors and Nurses in the Hospital
- iii. Number of deaths of children in each hospital in the last 3 years
- iv. Number of children in the last 3 years not discharged due to inability to pay hospital bills.

The request for the above information under the Freedom of Information act was sent to the following hospital seeking for response:

- i. National Hospital Abuja(NH)
- ii. Maitama General Hospital Abuja(MH)
- iii. Asokoro District Hospital Abuja (AH)
- iv. Garki Hospital Abuja (GH)

While the FOI request from the National Health Insurance Scheme (NHIS) was:

- i. Level of disbursement and uptake by children recipients between the ages of 0-18 in the last 3 years.

## Results

We received returns from 4 institutions as shown in the result section table, however there were inconsistencies in the information provided because of the interpretation of certain sections of the FOI Act.[section 15 a, b] One hospital(NH) provided all the requested information, the second (GH) provided only 50% of the information requested and stated the reason for not providing the other information and sighting provision 15 a, b of the FOI Act as the reason for refusing to disclose [section 15 a & b]. Their interpretation of this section was not accurate and this does indicate a lack of understanding of this provision in the FOI Act 2011.

2 hospitals ( **Asokoro & Maitama**) managed by the Health Board sent their reply very late after several reminders and they declined sending the requested information relying on sections 15 a and b of the FOI Act to justify their decision to withhold information, and also described the request as '**untenable**'.

The 5<sup>th</sup> request sent to the National Health Insurance Service (NHIS), was simply ignored even when several reminders were sent. This is in breach of FOIA and an indication of poor institutional governance arrangement and leadership within the organisation.

## Information received

The outcome of the request for information from the contacted healthcare providers and the NHIS under the FOI Act 2011 was not encouraging given the level of poor response and the length of time involved in sending frequent reminders.

S/N	NAME OF FACILITY/AGENCY	INFORMATION RECEIVED	NOTE
1	<b>National Hospital Abuja</b>	Total Number of Paediatric admission to the ward in <b>2016-2018 : 10,788</b>  Number of Paediatric doctors:- <b>46</b> Consultants <b>11</b> resident doctors) <b>35</b> Nurses:- <b>111</b>  Total Number of paediatric deaths in all paediatric ward:- <b>627</b>	Responded and disseminated information within the required time of 7 days for granting application for information under the act.

		Number of children not discharged due to no-payment of bill:- Non <b>(0)</b>	
2	<b>Garki Hospital Abuja</b>	<p>Number of paediatric admission to wards in last 3 years:-  <b>2016= 872</b>  <b>2017= 1,089</b>  <b>2018= 1,017</b></p> <p>Number of deaths in the last 3 years:-  <b>2016- 5</b>  <b>2017- 2</b>  <b>2018- 1</b></p> <p>Number of children not discharged due to non-payment of bills:-  <b>2016- 0</b>  <b>2017- 0</b>  <b>2018- 0</b></p> <p>Staffing number of paediatric doctors and Nurses:- nil  Declined quoting information exemption by section 15, subsection 1a and 1b.</p>	<p>Responded with information within the required time of 7 days for granting application for information under the act.</p> <p>Declined to give information on staffing numbers for doctors and nurses quoting exemption under section 15 subsections 1a and 1b.</p>
3	<b>Asokoro District Hospital and Maitama District Hospital</b>	<p>None supplied and claimed exemptions.</p> <p>Repeat request sent advising them that the exemption did not apply to the requested information.</p> <p><b>They failed to respond therefore breaching the terms of the ACT.</b></p>	<p><b>Declined to provide information</b></p> <p>The applications were referred to the FCT Hospital Management Board, the process took more than 8 week to get a response regarding the information requested for, as the application is being traced and followed from Admin General Manager to Legal Office back to Admin and Finance to Head of Admin and finally the request was denied quoting the FOI Exemption of Public Institution from disseminating information with</p>

			respect to professional or other privileges conferred by Law, to wit: Health Workers – client Privileges and any other privileges of information Act, 2011. Also section 15(i & ii) – on personnel file and personal information maintained with respect to employees.
4	<b>National Health Insurance Scheme (NHIS)</b>	None	<b>Failed to respond</b>  The application was referred to the Legal office and for over 16 weeks of follow up, no feedback from the legal office. <b>Breach of the FOI Act</b>

## Discussion

The FOI Act 2011 is an Act to make public records and 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, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and related purposes thereof.

Under this Act, the right of access to record is stated as follows:

1. (1) Notwithstanding anything contained in any other Act, Law or Regulation, the right of any person 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 hereby established.  
(2) An applicant under this Act needs not demonstrate any specific interest in the information being applied for.  
(3) Any person entitled to the right to information under this Act, shall have the right to institute proceedings in the Court to compel any public institution to comply with the provisions of this Act.
  2. (4). A public institution shall ensure that information referred to in this section is widely disseminated and made readily available to members of the public through various means, including print, electronic and online sources, and at the offices of such public institutions.
- 4 Where information is applied for under this Act, the public institution to which the application is made shall, subject to sections 6, 7, and 8 of this Act, within 7 days after the application is received –

(a) Make the information available to the applicant;

(b) Where the public institution considers that the application should be denied, the institution shall give written notice to the applicant that access to all or part of the information will not be granted, stating reasons for the denial, and the section of this Act under which the denial is made.

**15 1.** A public institution shall deny an application for information that contains:-

- (a) Trade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of such trade secrets or information may cause harm to the interests of the third party provided that nothing contained in this subsection shall be construed as preventing a person or business or business from consenting to disclosure.
- (b) Information the disclosure of which could reasonably be expected to interfere with the contractual or other negotiations of a third party ; and
- (c) Proposal and bids for any contract , grants, or agreement , including information which if it were disclosed would frustrate procurement or give an advantage to any person.

Findings from this report shows that the Freedom of Information Act 2011 is not monitored or regulated, as there is no mechanism in place to measure and enforce the level of compliance. Government institution's failure to make public information and records more freely available to the public who request for information under the Act defeats the purpose of the FOI Act 2011.

When the Freedom of information (FOI) Act 2011 was passed and signed into law by the then president Jonathan, most people believed it as a step in the right direction and an action that could move Nigeria forward in its quest to improve governance in its developmental strides.

The scope of cooperation however, indicate that there is lack of useful information about the number of deaths of children in hospitals in the federal capital territory (FCT), The lack of information on the staffing level for nurses and doctors who care for children in the hospitals within the jurisdiction of the federal capital territory (FCT) at 2 out of the 4 hospitals contacted is unhelpful which indicates that the necessary statistics may not be available to government , so will lack the necessary information with which to adequately plan future provisions. It may also not be out of place to assume that these institutions may deliberately be holding back information which may be unfavourable to their organization. We have no indication that the federal Ministry of Health is capturing or getting regular accurate returns on this vital performance statistics. This data is a measure of the quality and adequacy of provisions to children.



It is also right to assume that some hospitals failed to understand the meanings of some provisions and certain aspects of the FOI Act. An example is that NH responded by providing all the information requested while GH provided half of the requested information, while AH and MH refused to provide any of the information citing section 15 a and b to explain their refusal. This is a clear indication that they lacked proper understanding of the meaning of the section or may be guilty of deliberately withholding information which we believe is a breach of the provisions of the Act.

It is strongly believed that to advance best quality practise there is the need to have information on possible outcomes hence the action of LHCHF to apply to these institutions for the information. The link between staffing numbers, bed numbers, deaths in hospital and refusal of admission will shed light on the level of clinical effectiveness in practise.

The analysis of the responses indicates a clear disparity in knowledge and interpretation of the provisions of the Act. Institutions applied different 'colours to the same painting' or were just refusing to action the request, knowing that they will face no sanction for their lack of compliance. There is therefore the need for re-education of health workers on the need to implement correctly the provisions of the Act.

It is of concern that the lack of national data on manpower within hospitals, accurate statistics on birth and deaths within hospitals, will be inimical to proper planning for health in the country. Data is the major fuel for change in healthcare and data reliance save life and reduces complications and improves care and governance. It also filters to lower cost of care by reducing the length of stay and hospital waiting time for treatment

In light of these findings, it is not reassuring to believe that the Ministry of health (MOH) are aware of the inept actions of some its agencies in relation to the correct implementation of the Act within their domain.

It is also not encouraging that NGOs trying to help in this field may not be enthused to provide valuable services if their work is impeded in this way.

FOIA effectiveness overall will depend on the attitude and commitment with which it is approached and implemented consistently by government agencies The public should insist on the full and appropriate implementation of the statute

Progressive stakeholders should rely on data to power the health engine of the Nigeria health sector as a transformation catalyst. Therefore collecting and creating an enabling environment for this to occur will definitely help policy improvements and implementation by user reliance and trust. FOI requests therefore should be seen as an essential vehicle needed to improve health care governance.

It is time to push for the collection of robust national data on health outcome which should include births, admissions, length of stay and deaths. There should also be avenue to know the staffing levels and mandatory training records which reflects level

of safety, effectiveness of the service provided. These data could be analysed and published and made available from an identifiable and useable portal for referencing when needed..

FOI is important to health practitioners as an aid to advocacy, means of impacting and helping health advocacy and helping to fashion transparency and accountability within government machinery ( practice & policy making)<sup>1</sup>

However if FOIA is not properly understood and used, it may be construed as an instrument for withholding rather than a statute for disclosure.

Clear understanding of FOIA's real purpose and usefulness will enable health workers, researchers, and NGOs to utilise this avenue to obtain information about important health data which can help to advance the advocacy work of all backgrounds and ideologies to participate in government policy making and implementation.

Health workers can use this avenue to promote transparency and accountability in governance by being responsive to the dictate of the relevant provision of the FOIA by promptly responding to requests and demonstrating good understanding of the provisions and applying the exemption clauses appropriately.

It is also not encouraging that NGOs trying to help in this field may not be enthused to provide valuable services if their work is impeded in this way.

FOIA effectiveness overall will depend on the attitude and commitment with which it's approached and implemented consistently by government agencies The public should insist on the full and appropriate implementation of the statute. (**Article 13 of FOIA**)

### **Recommendations**

- FMOH should increase awareness of the provisions of the FOI Act 2011
- Training sessions on how to implement the provisions of the articles of FOI Act should be embedded in the governance structure of the ministry.
- There should be adequate monitoring and evaluation of the activities of the relevant section that handles the management of FOIA requests.

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He was an examiner for the medical school of Manchester University and currently an examiner for Royal College of Paediatrics and Child Health UK. In addition to his medical degrees at undergraduate and post graduate levels, He also holds a Masters degree in Law (health care law).

His clinical and managerial skills was recognized for clinical excellence and earned him the Bronze award for excellence in the NHS UK. He continues to provide clinical service as a Consultant in Paediatrics and Gastroenterology. As part of his contribution to health care governance, he is a Performance assessor to the General Medical Council of UK and a Professional and Clinical Advisor to the UK Care Quality Commission.

He is now devoting his skills in Research under the auspices of the Lady Helen organization to add value to the Nigeria Research base.

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