

## Freedom of Information: The Act, Ideal and Practice

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**ABSTRACT:** *A Government's commitment to openness is its ability to avail public information to citizens. In this regard Governments are expected to release information to facilitate public participation in policy formulation, decision-making and service delivery. Against this background the Government of Sierra Leone in 2013 passed the Right to Access Information Act for the disclosure of information held by public authorities or by persons providing services. Invariably this article critically examined this Right to Access Information Act in relation to constitutional provision, its relation to other international FOI Acts, the importance of information as a natural resource and how it is accessed, the value of records keeping in ensuring freedom of information as inseparable entities, and its pitfalls.*

**KEYWORDS:** Sierra Leone, information, information provision, access to information, information services, information management, human rights, freedom of information

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### INTRODUCTION

The provision of information has always been at the center of the relationship between government and society and is instrumental in the way governmental institutions have been created and allowed to develop. In Sierra Leone Government in 2013 passed the "The Right to Access Information Act" which provides for the disclosure of information held by authorities or any persons providing services. Information, according to this Act, includes any material regardless of its physical form or characteristics, such as a book, plan, map, drawing, film, microfiche, diagram, pictorial, or graphic work, data, photograph recording, audio or video tape, machine-readable material or any other information held in electronic form, and also includes any sample, work, model or copy thereof. The Act depicts open government for accountability, probity, scrutiny, and improved decision-making as well as inhibiting corruption.

However, freedom of information in Sierra Leone has attracted much polemic and political attention than virtually any other aspect of contemporary government and administration. Press and media often make reference to the 1991 Constitution, the confidentiality of state secrets, access to records and protection of information collected by public and private bodies. Government is the official regulator of human affairs for the greater good but does the duty to inform end when regulation of essential interests or decisions affecting the collective welfare is taken by a separate body? What place is there for freedom of information in the way of arranging the public interest? Where does the theme of freedom of information stand in relation to the belief that Government is also the organization of information for use, effective or otherwise, of power in the public interest?

The changing nature of the role of Government, not simply as an agent protecting and defending the realm from external and internal struggle but as a sharper of people's lives in almost every conceivable way, is crucial. Government intervenes more and more in our society, whatever its political line. For instance, Government invokes a wide variety of reasons for censoring speech and publications, for justifying secrecy, and for taking action against individuals because of their opinions such as national and state security, sedition, rights of others, public interest, public health, public morals, violence, public orderly tribalism, racism, sexism, religious tolerance, propaganda, media bias, corruption, Intellectual Property Rights and protection of sources of information. No one can demand that Government is omniscient; what is required is an improvement in the flow of information between the high ranks of Government and the administration and public interest. The Right to Access Information Act, 2013 operates on the basis that the more information that is available, the better and/or the more democratic the process of Government will become.

### **The Value of Information**

Our capacity as human beings to acquire, use and store information is essential for our survival. We experience information every day in our lives. Information is a strategic resource for any organization vital as land, labour, capital and yet imbued with its own specific properties that enhance its importance. Labour and capital are depletable assets- the more used the less one has. Information, on the other hand, is a regenerative resource that not only grows with use, but can be used over and over again in different contexts to create value in multiple ways. Within organizations the exchange of information and ideas among knowledgeable staff members can result in insights that are more powerful than individual pieces of information.

Lack of information facilitates a lack of accountability for the exercise of power and influence and the impact these forces have upon the public interest where democratic controls are absent. Information is inherently a feature of power. So too is its control, use and regulation. Government is the organization of information for the use, effective otherwise, of power in the public interest.

Take away a Government's preserve on information and its preserve of when and what to release, then take away a fundamental bulwark of its power.

Information is a basic human right, a major factor fuelling development in society. It is a pivotal aspect of life and is mostly linked to all knowledge, understanding and decisions we undertake throughout our life time. Equally so every Government needs information to function. Governments need information on a wide variety of issues such as statistics on the national population, health, employment, social security entitlements of individuals, crime occurrences, levels of production and consumption for investment, improvement of human capital and development purposes. Information is a very important tool in every society or organization especially in decision making or administrative research. It is the pillar for effective administration. With information available individuals, management and policy makers are capacitated in the decision making process. Between organizations the sharing of information and data can synthesize relationships. Information is necessary to make sensible choices or wise judgments. Moral and ethical evaluation depends upon information acquired through our own and our predecessors' experience. Information in the form of facts constitutes the basis of order of our lives, of country and knowledge. The attempt to convey correct information is the basis on which communication is premised. We are all regular providers of information and we know the consequences of proving false information if we are caught out. There is a converse side to the provision of information. This is the control of information: that pursuit of secrecy or confidentiality which is essential to our development as human beings.

### **Access to Information**

In contemporary society access to information is required at any point in time for people as catalyst for social, economic and political development and decision making. The concept focuses on the right of individuals to have access to information in the right format at the right time. It is a basic right to all citizens in a nation; the means through which information is made available to every individual and provides possibilities for making information sources available to the public.

Everyone can contribute information, ideas, thoughts, opinions and knowledge essential in an inclusive information society. To support the sharing and strengthening of knowledge for development there is every need to remove barriers to equitable access for information for economic, social, political, cultural, and educational activities by facilitating access to information. Access to information is the basic resource that people use to improve their conditions of living. It helps people to develop their potential through education and business training to support their cultural experience and then secure a substantial livelihood.

The ability to inform ourselves regarding the world we live in is vital and should be treated with respect and total sincerity. Therefore, Article 19 of the Universal Declaration of Human Rights

adopted by the United Nations makes provision for the freedom of expression of everyone with the right to hold opinions, without interference, and to seek, receive and impart information and ideas through any media and regardless of frontiers. This right to information has dual benefits: it lays the foundation for a legal right to know about a whole range of Government policies, decisions and activities; and it empowers people to position themselves at the center of political dialogue. It is for this reason that the United Nations General Assembly recognized freedom of information as a fundamental human right and the touchstone for all freedoms the United Nations is consecrated.

### **Information and Records Management**

Information is a vital resource for national development. Organizations require information to grow or survive. Without knowledge based on current and accurate information managers can't make good informed decisions. Such information is kept in records which contain information about and evidence of organizational functions, policies, decisions, procedures, operations, and other activities. To be successful records must be managed and made available when needed (Millar, 2003).

Both Government and business organizations have recognized the need to manage records as is evident in their actions. Records are the corporate memory of organizations. Organizations do not depend on elusive memory and conflicting recollections, rather they depend on recorded past accomplishments to provide a foundation for future development. Accurate records are necessary to provide this background information for planning for the future while taking advantage of the past (Ngulube and Tafor,2006).

To make sound decisions managers must have appropriate information. Decisions are only as good as the information on which they are based. And much of the information necessary for decision making is found in records. The importance of documentation to the continuing life and success of organizations has become critical as more and more consumers, individuals and organizations turn to the court systems as for their concerns and as avenue of recourse. Records provide litigation support. Similarly, organizational efficiency can be impaired if needed information is not readily available. Frustration and reduced efficiency could occur when those responsible to make decisions are unable to locate the information necessary to effectively develop and evaluate alternatives. Even more so are records needed for legislative and regulatory requirements. Many organizations involved with state government programmes operate using established policies and procedures. Records of such organizations are subject to retention and disposition criteria as well as established corporate criteria.

Records document the past and provide information about future events. They preserve history for future generations. When recorded information is lost or destroyed, much of it is never regained. Portions of the information regained are often a result of recollection and may contain considerable

distortion from the original records. Records provide a reference base not only in a historical sense but also in a current sense. Technical reference files consist of specialized information for use as a technical reference library. Therefore, organizations must maintain this historical base as evidence of their past achievements and as introduction to the future. Records are vital for accountability, probity and transparency; they are vital sources in the fight against corruption. Managing records is an important function of any organization as it provides timely access to information. It is a fundamental activity of public administration. Public servants need new information to carry out their work and records are crucial sources of information. They are reliable sources of evidence of decisions and actions (Khumalo and Baloyi, 2019).

### **Freedom of Information**

The Universal Declaration of Human Rights in 1948 by the United Nations Assembly continues to be global aspiration of respect for human rights as contained in Article 19 which reads:

“Everyone has the right to freedom, opinions and expression. The right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

In 1950 the European Convention on Human Rights was adopted by the Council of Europe with the right to seek information expressed in Article 10 which states:

“1. Europe has the right to freedom of expression; this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontier. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.”

“2. The exercise of this freedom, since it carries with duties and responsibilities may be subject to such formalities, conditions, restrictions or penalties as are predicted by law and are necessary in a democratic society, in the interest of national security, territorial integrity, or public safety for the protection of health, or moral, for the protection of the reputation or right of others or for preventing the disclosure of information received in confidence, for maintaining the authority and impartiality of the judiciary.”

In a similar vein, the Organization of American States (OAS) adopted the American Convention in 1969 with a strong formulation of the right to freedom of expression set forth in Article 13 thus:

“2. The expression of the right...(to freedom of thought and expression) shall be subject to prior censorship...”

“3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or of private controls over newsprint, radio broadcasting, frequencies, or equipment

used in the dissemination of information or by any other means tending to impede the communication and circulation of ideas and opinions.”

4. “Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.”

The International Convention on Civil and Political Rights (ICCPR) came into force in 1976 along with the Covenant on Economic, Social and Cultural Rights. Article 18 of the Covenant guarantees freedom of conscience, religion and beliefs; Article 19 protects freedom of expression; Article 20 deals with the duty to prohibit propaganda for war and incitement racial or religious hatred.

The African Charter on Human and Peoples Rights came into existence in 1986. Article 9 of the Charter reads:

“1. Every individual shall have the right to receive information.”

“2. Every individual shall have the right to free association provided that he abides by the law.”

Similar sentiments are shared by the Arab Charter on Human Rights initiated by the Arab League on March 11, 1979 and the Helsinki Final Act which is the title given to the Accord agreed upon after the Cooperation in Europe held in 1975 (Article 19,1991).

In Sierra Leone, however, freedom of information is enshrined in the 1991 Constitution along with the freedom of the press as stipulated in Section III subsection 25: 1 which reads:

“Except with his own consent no person shall be hindered in the enjoyment of his freedom of expression, and for the purpose of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference; freedom from interference with his correspondence, freedom to own, establish and operate any medium for the dissemination of information, ideas, and opinions and academic freedom in institutions of learning.”

In addition to the said freedom, Government set up the Independent Media Commission (IMC) as regulatory agency for all Radio, Television and Newspaper institutions. The IMC also deals with media complaints. Government has removed from the laws of the country the Public Order Act of 1965 initially used to charge journalists when they fell short of the law. Currently the Press operates freely and covers a wide spectrum of opinions; the number of Community Radio Stations, Film and Video Centers, Television Stations and Foreign Press in operation has increased considerably. There is religious tolerance; Christian and Muslim holidays are peacefully observed nation-wide. There is free communication of thoughts and opinions; citizens speak, write and print in liberty freely. So far there is no body behind bars for what they speak, write or print.

## **The Act**

The Right to Access Information Act, 2013, also known as RAIA, makes provision for the disclosure of information held by public authorities or by persons providing services. Request for information, according to subsection 3 (1) should be done in writing, describing the information needed and providing an address for purpose of correspondence. Application to access information should be made in English Language or Krio by email, fax, post, telephone or by any other provided medium that the applicant provides. The time limit for compliance is within fifteen working days. Where a public authority does not hold the information which is responsive to a request or part of it that request should be transferred to another public authority in not less than three days from the date of the request. The public authority to which an application is transferred will decide the request in accordance with the timeliness set and failure to conform to the timeliness set out is tantamount to refusal of the request, for purposes of complaints and appeals. Section 8(1) a-q deal with the classes of information that form the core proactive obligations for all public authorities.

Part III deals with exempt information from Sections 12-27. This includes national security, international relations, economic interests, investigation and law enforcement, Third Party information, client professional privilege, personal matters, commercial interest, public economic interests, historical records and severability. Part IV deals with measures to promote openness. Every public authority is required to generate and maintain records of its activities in a manner that facilitates the right information as provided in the Act and in accordance with the Code of Practice. The Act makes provision for the appointment and training of information officers (Section 28(1)-(7)). Public authorities are required to develop Information and Communication Technology Units in accordance with the National Information Communication and Technology Policy to facilitate access, ensure transparency and accountability and improve record keeping (Section 29). Part IV deals with measures to promote openness.

To ensure compliance a Commission is set up as body corporate with the overall objective of promoting the demand and supply of information as contained in Part IV Sections 30 -31. Its mandate is to promote access to information held by public authorities including Non-Governmental Organizations as well as the private sector. The Commission has powers to: monitor and report on the compliance by authorities with their obligations under the Act; make recommendations for reform, both of a general and specific nature to public authorities; cooperate with or undertake training activities for public authorities on the right to access information and the effective implementation of the Act; refer to the appropriate authority cases which reasonably disclose evidence of criminal offences under the Act. Parts VI – IX deal with financial provisions, appeals, offences and penalties and miscellaneous provisions respectively.

## **The Ideal**

Access to freedom of information laws serve two purposes: it makes it an obligation for the state to release public information; and it empowers citizens to access information created and held by public entities. Right of access to information is a telling indication of the Government's willingness to embrace the openness agenda in having a right to information. However, one of the aspects that influences implementation of any Right to Information Act is the existence of a conducive legal and regulatory framework for openness. Kreimer (2008) asserted that for transparency initiatives to succeed they have to be embedded in a broader web of legislation and regulation such as constitutional provisions that support openness, amendment of laws that are inimical to access information, coherence between the access law and laws relating to the management of public laws and archives, existence of regulations to operationalize the access law and coherence between the access law and laws relating to the management of personal information.

According to the World Bank (2004) freedom of information laws should meet several international standards namely:

1. The right to make oral requests.
2. An obligation for public bodies to appoint information officers to assist requesters.
3. An obligation to provide information as soon as possible and, in any case, within a set time.
4. The right to specify the form of access preferred, such as inspection of the document requested, an electronic copy, or photocopy.
5. The right for written notice, with reasons, for any refusal of access.

Consistent with these standards the World Bank (2013) outlined seven factors which are to be kept in freedom of information legislation namely:

1. Scope of coverage disclosures.
2. Procedures for accessing information.
3. Exemptions of disclosure requirements.
4. Enforcement mechanisms.
5. Specified deadlines for release of requested information.
6. Sanctions for non-compliance.
7. Proactive disclosure.

The African Human Rights Commission's (2013) crafted blueprint model for a model law on access to information covers the following areas:

1. Placement of information officers.
2. Exemptions and specific records and documents exempted.



3. Coverage of the private sector.
4. Guardianship of freedom of information laws.
5. Time limits for processing requests.
6. Protection of whistle blowers.
7. Public interest override.
8. Overriding of laws on freedom of information issues and other restrictions.

The aforementioned criteria and standards are met by the Sierra Leone's Right of Access to Information Act, 2013. This Act does not operate in isolation but interfaces with other legislations such as access to personal information, policies relating to the management of public records and archives and the protection of whistle-blowers. It recognizes and guarantees citizens' right to access information consistent with Constitutional provisions. Constitutional guarantee of the right to access information is important as it lays the legal foundation for the enactment and implementation of an access to information law. It obliges the Government to provide information to the public to enhance transparency, accountability, probity as well as greater citizen participation and over-sight in government decision-making.

Freedom of information and records management are inseparable. Access to information hinges on the presence of adequate records and information management systems, which guarantee the management of records throughout their life cycle. With the passing of the Right to Access Information Act in 2013 in Sierra Leone it is hoped that the legislation could increase employment opportunities for records and archives professionals, promote the development of records management systems, the formalization and standardization of records management practices and the further training of practitioners. This is yet to be seen.

### **The Practice**

The RAIA in Sierra Leone has many interesting and useful aspects. One benefit is that it helps departments to file records coherently. Freedom of information rests upon the principle that it is an inalienable right and the foundation of democracy. Without freedom of expression governments can and do act with impunity. However, while interference with the holding of opinions is never justified, limits can be placed on freedom of expression and the availability of information in certain circumstances. The general guiding principle is that freedom is the rule and its limitation the exception, with the onus of justification resting with those wishing to impose restriction through a procedure independent of the executive branch, such as a judiciary hearing or the opportunity for judicial review.

The RAIA does not cover records created before it came into effect unless the applicant requires them for understanding documents to which they have access. There should be provision to allow "prior records or documents" to be inspected by periodical extensions, say over a five-year period.

Further FAIA should be established with the necessary staff and facilities. For instance, the field of “Policy” or “General” in Government Ministries, Departments and Agencies (MDAs) does create problems regarding the degree of specification involved in identifying them. Two alternatives are needed here: appointing FOI officers in MDAs to establish precisely the information needed at any point in time; and a sophisticated cataloguing document with instructed access so that documents could be identified by their file numbers. This is yet to be done both in public and private institutions or departments.

The RAIA establishes a right of access for all and such access to records or documents belongs to or possessed by departments, individuals, agencies and organizations. Therefore, an Accessions Register should be provided that contains description of public records, their probable locations and other information which will likely assist applicants for information in identifying as precisely as possible which records applicants want to see. Instructions should be provided on how to get assistance and how to apply for access. Government departments should have access coordinators who will assist *pro bono*. To this end department should introduce reading room facilities for use of the Accessions Register. To effectively provide access, institutions should publish Indexes of the records they hold and Codes of Guidance describing how to apply for inspection, copy and correct the information. We are yet to see this done in the country.

The question of privacy is debatable. Imagine that we accepted a legally protected definition of privacy as the claim of individuals, groups or institutions to determine for themselves when, how and to what extent information about them is communicated to others. Would we be able to insist that whenever we give information about ourselves it could be used for the purposes for which it is given? Information about us cannot be used unless it has come to public domain through any choice or our actions. Even if we agree that there are good grounds for invading our privacy where a clear and identifiable public exists much investigative journalism would cease if we accept that definition. Those who support a free and independent press are equally critical of an irresponsible press. Making information about oneself a property right could create enormous restrictions on our freedom of speech. Also allowing others to determine exclusively the means by which they collect, use or disseminate information gives them the managerial prerogatives. As with all prerogatives they are potentially inimical to shared responsibility, accountability and democratic values.

As it is many of the areas which witness the greatest abuse of personal information-gathering are not covered by the RAIA. Trade Unions have often complained about the inadequate nature of information from organizations employing their members concerning management’s proposals for future developments affecting company and employees. Closely related to managerial confidences are professional confidences. Through control of information, professionals can enhance their monopoly of control regulation and practice as well as the communities they serve. For instance, in Sierra Leone, the Bar Association only opens its meetings to its membership and has given

limited press access to such meetings. Similarly, the Banks are constrained to reveal their information to the press and public in order not to break the confidentiality they offer to their customers. A complex web of arguments surrounds the medical profession. People want greater access to medical files that their doctors or health authorities hold on them. The FAIA does not cover records of medical authorities, practitioners, hospitals and patients. For the medical profession, the confidentiality of such records is meant to protect the status of medicos; access to such records could expose patients to serious physical and mental harm.

It is Government's view for civil servants not to answer questions or disclose information which their Ministers have not instructed them to do so or which is contrary to their duty of confidentiality to answer or disclose. Civil servants' first duty is to the Minister and it is the Minister that decides what Information should be made available and how and when it should be released, whether in the Well of Parliament, to Select Committee, to the media or to individuals.

The role of the Courts and their part in providing information to all is a cause for concern. Sierra Leoneans encounter in Courts official secrecy and in relation to aspects that one may gain access into the inner workings of Government. The country does not possess a rich case law of decisions for people to debate their rights as citizens in relation to Government information. And in law if you don't own the information or the documents on which it is expressed or placed or cannot claim the protection of confidentiality, you have no claim. Further there is no rule that judges and magistrates must give reasons for their decisions, neither are they publicly expressed or published. Their decisions have to fit into the body of precedents. What is more freedom of government information is reserved business? Even when confronted with cases concerning freedom of speech, Courts have disclaimed any constitutional dimension to their decisions, holding that the prevention of a meeting or a public address was simply a corollary of the police apprehending a breach of the peace.

Information on judicial appointments is one of the most protected items in the country. Judicial appointments process ensures that only the safe and sound could be promoted to the Bench. For an appointment to the High Court, a barrister is expected to have displayed the necessary ambition and dedication not only to have mastered the most difficult briefs, but have mastered the system. Any injudicious, intemperate or outspoken public statements could be damning. Boat rockers hardly reach the top. Once in office judges serve under a voluntary Code of Silence, the "*Kulmuir Role*," whereby they do not make public utterances on subjects in the media. So long as the judge keeps silent his reputation for wisdom and impartiality remains unassailable.

The openness of the Courts is doubtful as jury vetting is on the increase in criminal cases. No Court may require a person to disclose nor is any person guilty of Contempt of Court for refusing to disclose the source of information contained in a publication for which he is responsible unless it

be established to the satisfaction of the Court that disclosure is necessary in the interest of justice or national security or for the prevention of disorder or crime.

Government has to give information in order to observe certain promises. Courts have sometimes assisted in a limited fashion litigant to have these promises fulfilled. Equally so the Courts have insisted that private litigants be more open in all stages of litigation to save time and cost. But where information cannot be conceptualized in proprietorial or quasi-proprietorial terms, the Courts lack the resources to foster compliance between the Government and governed in the absence of constitutional principle good and responsible government which they could invoke.

Not all information is open to applicants. For instance, the Sierra Leone House of Parliament is the Grand Inquest of the nation and does ask questions. It can demand debates and can summon witnesses, call for evidence before its Select Committees, especially the Public Accounts Committee. By these processes it holds Cabinet Ministers responsible for their Ministries' administration. However, Parliamentary proceedings such as those in Courts are protected by absolute privilege. Similarly, Parliamentary Questions (PQs) to Cabinet Ministers, parliamentary debates, information from MPs' constituents, civil servants and interest groups, to cite a few examples, are not covered by the RAIA.

The Government does not exist in isolation; it stands at the apex of the administration of the state and relies upon others in the public and private sectors to help promote, administer and deliver Governmental programmes. Information pertaining to all this is not covered by the RAIA for easy reach. On a similar vein Government has influence and control over broadcasting. It has the ability to censor, influence or regulate the nature of political information which is broadcast through the Independent Media Commission (IMC) and the Ministry of Information and Communications and the application of "D Notices" especially with regards to information that is detrimental to national security and that which is against public interest. That notwithstanding, the RAIA does not make provision for its review by the Right of Access to Information Commission whenever changes can be made, inviting public and official comments about it, proffering suggestions for its extension and seeking advice from conducting investigations into all appropriate authorities. The Act doesn't make provision for its life span.

## **CONCLUSION**

The information we use and build upon constitutes our past, present and future. It is little wonder its protection and dissemination has attracted so much political and legal attention, for it is concerned with power and possession, wealth and influence, success and failure. It has much relevance to the process of Government and as to our most intimate secrets. The RAIA is a necessary safeguard-a boon to isolated individuals beset by Government. No FOI movement is accomplished by a wide-varying constitutional culture, institutions and practices; it must be

questioned whether or not it will be of lasting utility to all but powerful organized groups who have the resources to use it; to a few academics; to journalists; and to the occasional public-spirited individuals. To provide safeguards against this happening, programmes of education already mounted by the Right to Access Information Commission be strengthened with regards to how the RAIA works, what it does and how best citizens can use it. No one should expect that the RAIA will change the nature of Government overnight. Much work, goodwill and education will have to be provided. Progress and democratic developments will take time. They are worth striving.

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