

ESSENTIALS OF THE FREEDOM OF INFORMATION ACT - LIBERIA

A Manual for Journalists



Embassy of the
Kingdom of the Netherlands

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ABOUT THIS MANUAL

Essentials of the Freedom of Information Act – Liberia: A Manual for Journalists seeks to contribute to public sensitization and access to information under the Freedom of Information (FOI) law of Liberia. The manual is produced as a guide to help citizens, information holders but particularly, journalists, to understand the FOI Act and how it operates in Liberia.

The manual has four chapters that highlights key information about Liberia's FOI law. It presents easy to understand information about the law that empowers the reader, particularly, journalists to use and assert the FOI law.

Chapter 1: This chapter gives a general brief about access to information and its relevance in promoting accountable governance. The chapter zooms in to give some knowledge about the Freedom of Information law of Liberia and its relevance to the media.

Chapter 2: The second chapter highlights the institutions and structures that support the smooth operation of the freedom of information law in Liberia. The chapter explains the various institutions and their roles within the FOI structure.

Chapter 3: This chapter explains the steps involved in accessing information under the FOI law. It provides a checklist on what is required when making a request under the FOI law. The chapter also discusses the basis for which information requested may be refused, and the processes to appeal such decisions. The chapter also explains issues surrounding fees and charges.

Chapter 4: The final chapter gives journalists quick tips on how to use the FOI law to access information in Liberia.

ACKNOWLEDGEMENTS

The Essentials of the Freedom of Information Act – Liberia: A Manual for Journalists was commissioned by the Media Foundation for West Africa (MFWA) to contribute to public sensitization and access to information under Liberia’s Freedom of Information Law. Particularly, the manual seeks to help journalists, citizens and information holders to understand the FOI Act and how it operates in Liberia.

The MFWA extends our sincere gratitude to the Executive Director of the Centre for Media Studies and Peacebuilding, Mr. Malcolm W. Joseph for his contributions towards the production of the manuscript.

CHAPTER 1

1.1 Introduction



Access to Information (ATI) or right to information is fast gaining grounds across the globe. Currently, more than 100 countries have adopted specific laws that grant citizens access to information. In Africa alone, almost half of the countries on the continent have these legislations. Even countries who do not have specific ATI laws have strong direct constitutional guarantees that grant citizens access to public-held information.

Access to information is a universal human right recognized under several international and local laws. For instance, Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) recognize access to information as a basic human right. In Africa, access to information is guaranteed in several legal documents including the African Charter on Human and Peoples' Rights (ACHPR), the African Charter on Democracy, Elections and Governance, among others.

Access to information is a vital mechanism for the realization of transparent and accountable governance. When properly executed, access to information laws promote transparency in governance and offers opportunities for economic advancement of nations. For instance, when information is accessible to citizens, they are empowered to participate in decision making processes i.e., influence policies,

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monitor public spending, and hold government and public office holders to account. They are also able to enter into informed dialogues about decisions that affect their lives.

In all these, the role of the media cannot be ignored. The media plays a vital role in ensuring that access to information laws are enacted and running smoothly. As conduits of information, the media fulfils an important function in ensuring that information is widely distributed. The media also facilitates audience/citizens participation in public discourse.

The media requires credible information to play its role within the access to information system. It cannot carry its function effectively if it is not able to access and interact with credible information. In the last two years, the Media Foundation for West Africa (MFWA) has initiated interventions to promote the media's use of ATI laws in West Africa. As part of the interventions, the MFWA has been developing simplified manuals on ATI laws for the media. Essentially, the manuals provide quick tips to journalists and other information seekers on ATI laws and how to use them to access government-held information. This manual presents an easy understanding of the Freedom of Information Act of Liberia and its operations, and empowers the reader to use and assert the law to procure information to which access is guaranteed.

1.2 The Liberia Freedom of Information Act

Liberia, on September 16, 2010, became the first country in West Africa to adopt an access to information law. This follows several years of lobbying and advocacy by civil society groups in the country. The Freedom of Information Act (2010) fulfills the constitutional requirements under Article 15 of the Liberian Constitution.

The Freedom of Information Act acknowledges that access to information is a fundamental right guaranteed by the country's constitution. According to sections 1.4 (b), "everyone has a right of access to information generated, received and/or held by public bodies, subject only to such limitations as are necessary and narrowly established for reasons of an equally or more compelling public interest". The FOI law aims to:

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- Promote effective, equitable and inexpensive exercise of the right of access to information;
- Establish clear and concise procedures for requesting and providing information held by public bodies and private bodies receiving public benefits or performing public functions or providing public service;
- Establish and provide for the exercise of a right to appeal any decision denying a request for information or infringing on the right of access to information; and
- Provide appropriate penalties and other sanctions for wrongful failure to keep and/or provide information.

The FOI Act details mechanisms for operationalising access to information in Liberia. The Act has eight (8) chapters. Each chapter spells out critical information about freedom of information and how it operates in Liberia. For instance, it highlights what information or document is public and what is classified as an exempt. The law also lays down procedures for accessing information and when the requested information is denied.

1.3 Understanding key elements under the Liberia Freedom of Information Act

This section of the manual explains some of the key elements under the FOI Act.

1.3.1 Scope of the FOI Act

The FOI Act applies to, and covers all public institutions and private ones performing public functions and services or receiving public funds or benefits. The public institutions include ministries, bureaus, autonomous agencies, public corporations, commissions, committees and sub committees, boards, military and paramilitary institutions as well as any other related bodies supported in whole or part by public resources.

The FOI Act applies to, and covers all public institutions and private ones performing public functions and services or receiving public funds or benefits.

The private entities that perform public functions or services as well as those that receive public funds or benefits include academic institutions, health institutions, telecommunications operators, banks and other similar entities. Information requested from a private institution must be restricted to those that the private institution received funds for.

1.3.2 Proactive vs. Reactive Disclosure of Information

The FOI law obligates public institutions to proactively disclose information (section 2.5). Without prejudice to the publication scheme, public institutions are obliged to publish certain classes of information as soon as they are generated or received by the institution irrespective of whether a request has been made or not. This means that public institutions must, on their own, publish information, provided they are not exempt information. Information that can be proactively shared/published includes budgets, financial statements, material contracts, organizational charts, etc.

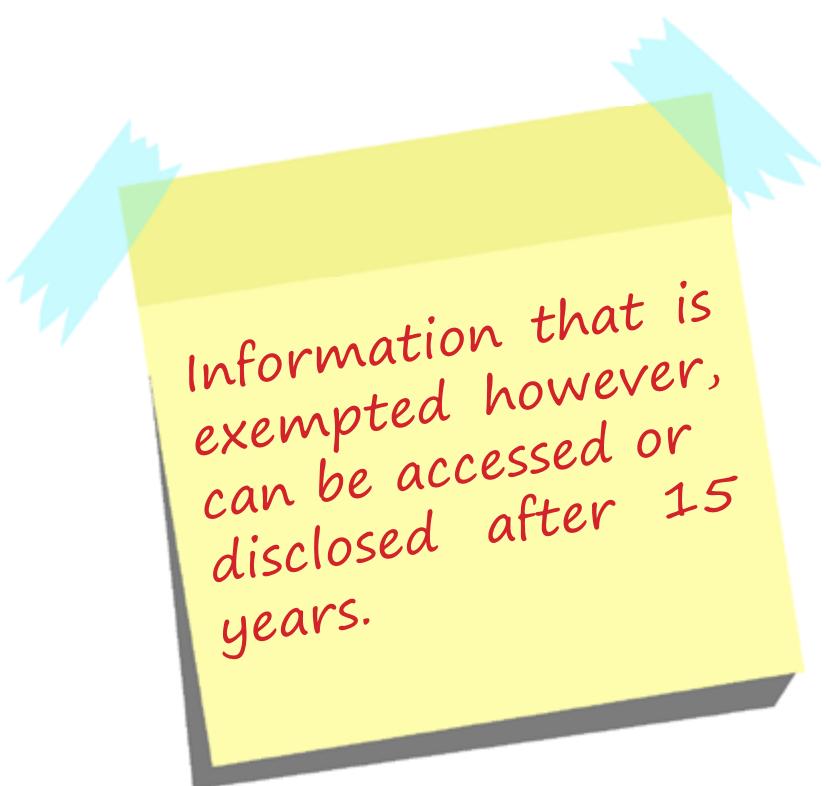
Without prejudice to the publication scheme, public institutions are obliged to publish certain classes of information as soon as they are generated or received by the institution irrespective of whether a request has been made or not.

There are times that public institutions are hesitant to disclose information for whatever reason. The law provides that under such circumstances, information should be given upon request. There is therefore no excuse to deny citizens access to information.

1.3.3 Accessible and Non-accessible Information

Although the FOI law grants access to public-held information, not every information is accessible under the law. Chapter 4 of the FOI itemizes a number of information that cannot be accessed. These are known as exempt information and they include; national security information, information related to defense or international relations, criminal investigations, trade secrets, privileged communications, personal information, among others. Information that is exempted however, can be accessed or disclosed after 15 years.

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CHAPTER 2

2.1 Institutional structures for the operationalisation of the Freedom of Information Act

A number of structures have been provided under the law to facilitate information accessibility.

2.1.1 Information Holders or Public Institutions

Every public institution is tasked to generate, preserve and constantly update a Publication Scheme (Chapter 2). The publication scheme must contain information such as the full name, functions and contact details of the information officer or designated officer in charge of FOI requests.

Clear statements describing the nature, organisation, functions and powers of the public institution including decision making processes, description of types and categories of information available at the public institution, and procedures to access information at the institution must be included.

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2.1.2 Information Officers or Designated Officers

The law provides that every public institution has an information officer or a designated officer who will have the responsibility of facilitating and coordinating access to information requests (section 3.6). The information officer is the interface between the public institution and the public. He / She is also the primary contact at a public institution for FOI requests and processes.

2.1.3 Internal Review Officers

Every public institution is mandated to put together an internal review mechanism to address grievances associated with information requests (section 6.2). The internal reviews shall be conducted by senior officials or an internal information request review body to be established by each institution. The institution has a thirty-day working period to conclude an internal review process. The outcome of each internal review shall be in writing and copies shared with the applicant.

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2.1.4 Independent Information Commissioner

The law provides for the establishment of an Independent Information Commissioner who will have an oversight role for the implementation of the FOI law. His role supported by a technical secretariat shall among other things, receive, hear and decide on all complaints as well as mediate disputes arising under the FOI Law (section 6.3).

2.1.5 Judicial Reviewers / Courts

The law also provides for right of judicial review where persons who are not satisfied by the decisions of the independent Information Commission can seek redress. An appeal from the decision of the Information Commissioner shall lie before the Civil Law Court in Montserrado County and in the Circuit Court of the county where the public institution is located (section 6.5).

CHAPTER 3

3.1 The Freedom of Information Request and Appeal Processes

Some of the cardinal provisions under the FOI Act are the processes to make a request (Chapter 3) and the processes to appeal a decision (chapter 6). This chapter of the manual seeks to give a summary of the two processes involved when an applicant wants to make a request or file an appeal under the law. The chapter also addresses the issue of fees and charges when making a request.

3.1.1 Steps for making FOI request

The procedure is simple. The request can be made orally or in writing. However, before making a request, do the following:

- 1 Be sure of the information you want to request.
- 2 Identify which public institution has the information.
- 3 Check to see or ask if the information has been published already. If it is already available, you can ask the institution where to locate it. This cancels the need to put in a formal request.
- 4 Prepare the request for information. In doing this, give as much description and details to help the information officer identify the information you are requesting.
- 5 Provide contact details i.e., mailing address, email, phone, etc.
- 6 Submit the request either in person or via mail. Whichever means you choose, ensure the public institution acknowledges receipt. It can be a stamped duplicate, or a mail to acknowledge receipt of the request.
- 7 Make a note on your calendar of the day you filed the request and track progress.

The public institution has thirty (30) days to respond to the request. If the institution is not able to provide the requested information within the thirty-day timeline, the law allows for an additional thirty (30) days to the institution, provided it gives a convincing reason for its inability to meet the initial 30-day timeline.

There are times that the public institution may not have the information you requested. The law permits it to transfer the request to the correct public institution within fifteen (15) working days. If the second institution does not have it, the law again permits it to be transferred to the correct institution but within (10) days. Each time this is done, the public institution must inform the applicant.

3.1.2 Steps for appealing a decision

Chapter six of the Act details out the appeal processes for a denied request. An applicant for information under the FOI law can appeal under the following circumstances:

- When public institution does not respond within the 30-day period
- When request is denied
- When information provided is not satisfactory
- When a fee or charged is unreasonable

Appeals can be made to senior officials at the public institution for an internal review. In an internal review, the senior official or internal review body will review an appeal and provide the applicant with the outcome of the review in writing within thirty (30) working days.

If an applicant is still not satisfied with a decision by the internal review body of a public institution, he or she can appeal to the Independent Information Commissioner. The Information Commissioner is required to review the request for appeal, reasons given by the internal review body and give a verdict.

An applicant for information under the FOI law can appeal under the following circumstances:

- Public institution does not respond within the 30-day period
- Request is denied
- Information provided is not satisfactory
- A fee or charge is unreasonable

3.1.3 Fees or charges for information requested

The search for, and provision of information under the FOI Act is free (section 3.11). The requested information may also be viewed for free. A public institution may however, charge a fee if necessary to cover actual cost of photocopying, transcribing, scanning, or other forms of reproduction.



CHAPTER 4

Ten Tips for Journalists to access information using Liberia's FOI Act

1. Plan your story development process:

This includes having the story idea, identifying the resource persons, sources or institutions to engage, what type of information you may need and who or which institution may have that kind of information. In the story development planning process, you will be able to determine which information you can directly access and which one you will need to specifically request under the Freedom Information Act.

2. Keep record of the Requests you submit:

Journalists are encouraged to submit formal information requests or make requests in writing. This will help you keep records of such requests in case you would need to make reference to them later. Such records are also useful in case you would have to appeal against failure or silence to your request by a public institution. It is advised that you start the request process early as some public institutions are less responsive.

3. Indicate in your request that you are a journalist:

You can make the choice to indicate in your request that you are a journalist or not. Some public institutions tend to provide information to journalists quickly once you clearly identify yourself as such. Remember however that, if you choose to identify yourself, you write your request on your media organisation's letterhead or mention in the letter or e-mail that you are a journalist who works for this or that media organisation. Be careful to ensure that this is also acceptable with your media organisation.

4. Know what the law says about Exemptions:

Liberia's Freedom of Information law lists information that are exempted. This includes for example state secrets, national defence secrets, etc. Before you submit a request therefore, check out on what those exemptions are to be sure that your requests do not fall under the exemptions.

5. Check what the law says about Fees and Charges:

The Liberia Freedom of Information law provides a context within which fees could be charged. Section 3.11 indicates that the search and provision of the information should be free. The only time a fee will be charged is for the reproduction of the information, i.e. photocopying and posting etc. Before you submit a request therefore, check whether your application would possibly incur any fees or charges. It is advised that in order to avoid costs, you can indicate in your request that you would prefer the information in an electronic format i.e. scanned and sent via email. Remember to provide the email address to which it should be sent to in your request letter or application.

6. Make room for Delays:

Remember that not all public institutions are inclined to be very responsive to information requests immediately a request is made. Even though the Freedom of Information law provides timelines within which a determination should be made on your request, some public institutions might not respond to your request at all or completely refuse you the information. Be prepared therefore to go through the appeal process which might create further delays.

7. Make a story out of Refusals and Silence:

Some public institutions will refuse to release information while others may be completely silent on your request. Since your information request is in the public interest, the refusal to release information is in itself a story to tell. Make a story out of it. This can be done by writing or broadcasting a story that the request has been submitted, but the public institution has refused to release information. This can draw public attention and also put pressure on the public institution to process and respond to the request.

8. Appeal against refusals and silence:

The Freedom of Information Act provides for an appeal mechanism in the case of a refusal or silence. Be abreast with the mechanism including knowing the next authority to appeal to and what time frames are involved. Ensure to exhaust all the appeal mechanism before considering a court option as that might be unduly expensive. It is advised that your appeal be based on public interest. For instance, if you have been refused information that you were pursuing for your story, state in your appeal that the information is needed for a media story and that there is a public interest in knowing that information.

9. Submit Multiple requests when in Doubt:

Once you decide on your story idea and the kind of information you might need in advancing your story, it is encouraged that you carefully search for the institution which can provide the information you may be looking for. When you are not sure which institution you should submit a request to, send requests to different institutions simultaneously. If a particular institution does not have the information you need, the Freedom of Information law stipulates that the information officer must inform you after processing your request and advise on where to get the information. Remember that, if a public institution does not have the information you requested, they can redirect you to the right institution or even forward your request letter to the appropriate institution and inform you accordingly.

10. Mention your Right to information:

Though you are not legally mandated to state in your letter of request that you are making the request under the FOI law, it is however recommended to demonstrate that you know your legal rights and may choose to do so. For instance, you could state that you are making this request in accordance or under the FOI Act (2010). This is likely to encourage correct processing of the requests according to the law.

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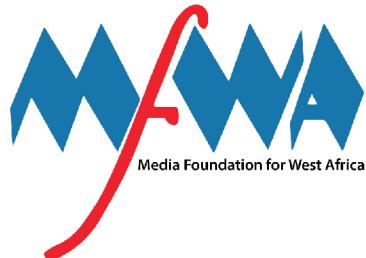
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