

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS
ON TUESDAY, THE 28TH DAY OF MAY, 2024
BEFORE HIS LORDSHIP HON. JUSTICE NNAMDI O. DIMGBA
JUDGE
SUIT NO: FHC/L/CS/238/2022

BETWEEN:

THE INCORPORATED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT } **APPLICANT**

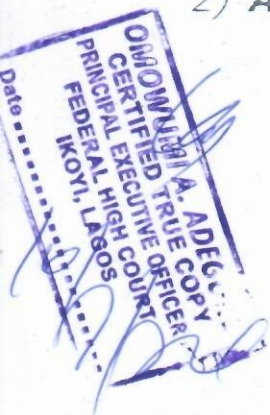
AND

1. THE PRESIDENT, FEDERAL REPUBLIC OF NIGERIA }
2. MINISTER OF INFORMATION AND CULTURE } **RESPONDENT**

JUDGMENT

By an Originating Motion dated and filed on 20/05/22, the Applicant prays for the following reliefs:

- 1) **AN ORDER** of mandamus by the Honorable Court directing and compelling the 1st Respondent to direct the Minister of Information and Culture to provide the Applicant with a copy of the agreement recently signed with Twitter, Inc., and to widely publish the details of any such agreement.
- 2) **AN ORDER** of mandamus by the Honorable Court directing and compelling the 1st Respondent to direct the Minister of Information and Culture to clarify the manner and scope in which the agreement with Twitter will be enforced, including whether the agreement incorporates the provisions of Chapter IV of the Nigerian Constitution 1999 [as amended] on fundamental human rights, and Nigeria's obligations under the

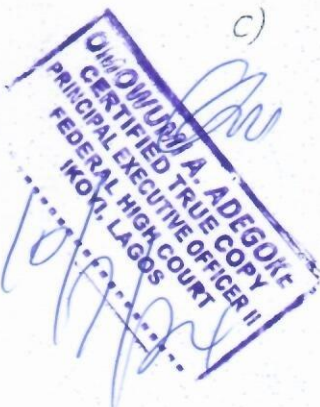


African Charter on Human and People's Rights and the International Covenant on Civil and Political Rights.

- 3) **AND** for such further order(s) the Honorable Court may deem fit to make in the circumstances.

The reliefs were sought on the following grounds:

- a) *There is a legal duty upon the 1st Respondent to direct the Minister of Information and Culture to provide the Applicant with a copy of the agreement recently signed with Twitter, Inc., and to widely publish the details of any such agreement and to clarify the manner and scope in which the agreement with Twitter will be enforced, including whether the agreement incorporates the provisions of Chapter IV of the Nigerian Constitution 1999 (as amended) on fundamental human rights, and the country's obligations under the African Charter on Human and Peoples' Rights and International Covenant on Civil and Political Rights.*
- b) *The Nigeria Government has signed on to the Open Government Partnership (OGP), United Nations Convention on Anti-Corruption (UNCAC), African Union Convention on Preventing and Combating Corruption in Africa and the Africa Charter on Human and Peoples Rights and has even domesticated the African Charter as part of Nigeria's domestic laws.*
- c) *In line with the Applicant's mandate, the Applicant by a letter dated 15th January, 2022, addressed and delivered to the 1st Respondent on 19th January 2022, requested the 1st Respondent to direct the Minister of the Information and Culture to provide the Applicant with a copy of the agreement recently signed with Twitter, Inc., and to widely publish the details of any such agreement and to clarify the manner and scope in which the agreement with Twitter will be enforced, including whether the agreement incorporates the provisions of Chapter IV of the Nigerian Constitution 1999 (as amended) on fundamental human rights, and the*



country's obligations under the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights.

- d) *However, since the receipt of the letter and the publication of same, the 1st Respondent has so far failed and refused to take appropriate steps as requested by the Applicant in its letter and in accordance with his constitutional mandates.*
- e) *By the provision of Order 34 Rules 1(1)(a) & (b); 2; 3(1)(2)(a)(b)(c) of the Federal High Court (Civil Procedure) Rules 2019 and Section 1, 2, 3, 4, 7 & 20 of the Freedom of Information Act, the Applicant is entitled to apply to this Honorable Court for a review of the actions of the 1st Respondent.*
- f) *Unless the reliefs sought by the Applicant are granted by the Court, the Respondent will not provide the Applicant with the information requested thereby continuously breaching the Applicant's rights under the Freedom of Information Act, 2011.*

The application is supported by a 25-paragraph affidavit deposited by Adewale Akinyemi on 20/05/22 to which was annexed: (1) A certified true copy of the certificate of incorporation of the Applicant and the Applicant's Constitution (**Exhibit A1**); (2) a copy of the Applicant's letter dated 15th January 2022 sent to the Respondents (**Exhibit A2**); (3) a copy of the Universal Parcel Services (UPS) Waybill used to deliver the letters to the Respondents (**Exhibit 3**); and (4) proof of the UPS Waybill delivery and acknowledgement of the Applicant's letter by the 2nd Respondent (**Exhibit A4 & A5**). The Applicant also filed a verifying affidavit dated and filed 20/05/22, in compliance with the Rules of Court, and deposited by Adewale Akinyemi. There was



also written submissions of counsel dated and filed on 20/05/22. Additionally, a 5-paragraph further affidavit with written submissions by way of a reply address was filed against the 1st Respondent's counter affidavit. These were dated and on 22/07/22. In the same vein, additional written submission was filed on 26/10/22 as a reaction to the 2nd Respondent's processes.

In reaction, the 1st Respondent filed a memorandum of conditional appearance dated and filed on 06/07/22. It was accompanied by a 5-paragraph counter-affidavit deposed by Felicia Des-Bodes, dated and filed 06/07/22, along with written submission of counsel. Additionally, the 2nd Respondent filed an 8-paragraph Counter-affidavit deposed to by Gekpe Cyrian on 14/09/22 and filed the same day, together with written submissions of counsel.

On 08/05/24, when the matter came up for hearing, learned counsel for the Applicant, Valentine Adegoke, Esq., adopted their processes and urged the Court to resolve the suit in their favour. In compliance with the Rules of the Court, processes of the unrepresented parties already in the Court's file were deemed adopted.

BACKGROUND FACTS

The Applicant is a registered civil society organization. On 4th June 2021, the 2nd Respondent suspended Twitter's operations in Nigeria. This suspension was lifted on 13th January 2022 following an agreement between Nigeria and Twitter concerning the platform's operations in the country. The Applicant requested a copy of this



agreement from the Respondents to ensure its wide publication and to verify its compliance with fundamental human rights laws. However, the Applicant received no response, leading to the initiation of this suit. The suit seeks an order from the Court to compel the 1st Respondent to direct the 2nd Respondent to publish the agreement widely and clarify its scope and manner of enforcement, to ensure it complies with all fundamental human rights laws. The Respondents deny they are obliged to honour the request. The parties are now before the Court to resolve the dispute.

DETERMINATION OF SUIT

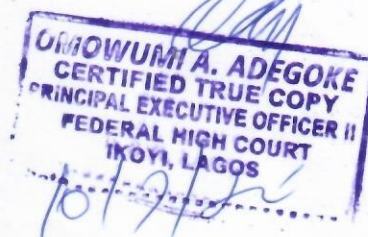
The counsel for the parties formulated and argued different issues while advancing their respective positions. However, I consider the issues formulated by the 1st Respondent more and fitting and accordingly will be adopt same for the resolution of the dispute as it accommodates all the arguments of the different parties. The issues are:

- a) *Whether the originating application for Judicial Review as presently constituted is actionable against the 1st Respondent.*
- b) *Whether the information required by the Applicant are covered as part of such to be disclosed under the Freedom of Information Act 2011.*

For the Applicant, first, it was argued that the right to the information sought is guaranteed under Section 1(1) of the Freedom of Information (FOI) Act, 2011, which establishes the right of any person



to access or request information in the custody of any public official or agency. And that by Section 1(2) of the FOI Act, 2011, the Applicant does not need to have any interest or disclose any interest in the information sought to be able to access the requested information. It was submitted that by the combined effect of Sections 2(1) & (2); 9(1) & (2) of the FOI Act, the Respondents must proactively record, keep and disclose information in respect of their activities and operations, without waiting for the Applicant to request for such information. It was argued that Section 4(a) of the FOI Act mandates that a public institution provide information that is applied within seven days of receipt of the application, but that the 1st Respondent has refused to comply with the Applicant's request nor direct the Minister of Information and Culture to release the terms and conditions of the agreement entered with Twitter Inc., and had also neglected to give notice to the Applicant of refusal and grounds of refusal as mandated under Section 7(1) of the FOI Act. Counsel argued that the requested information is not exempted from disclosure under the Act. The Applicant's request it was argued also concerns the national interest, public welfare, public interest, social justice, good governance, transparency, and accountability. It was argued that the Court must order the disclosure after finding that the public's interest in having the record is greater than the interest being served or protected in having the information concealed. Reliance was placed on **Governor of Ebonyi State & Ors v Hon. Justice Isuama (2003) FWLR (Part 1690 page 1210 at 1227-1228;**



Section 39(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

For the 1st Respondent, it was argued that it is outside the statutory duty of the 1st Respondent to keep records or provide the Applicant with the requested information. In addition, counsel submitted that the 1st Respondent does not have a supervisory role over the administrative duties of the 2nd Respondent, and its function is to provide Nigerian citizens with credible and timely information on government activities, programmes and initiatives. And that it is for the 2nd Respondent to determine the type of information to divulge to the public. On issue two, it was submitted that the right to information is not absolute, as certain forms of information are exempted from disclosure **under Sections 12(1) 14(1) of the FOI Act**. Reliance was placed on **CBN & Anor v PPDC Ltd/Gte (2018) LPELR-45856**.

It was also argued for the 1st Respondent that the Applicant's suit is statute-barred since it was filed outside the 3-month window permitted by law for actions against public officers. It was stated that the cause of action occurred on the 13th of January, 2022, and the Applicant wrote to the 1st and 2nd Respondents on the 15th of January, 2022 and instituted this suit on the 20th of May, 2022, which is more than the prescribed statutory duration. Counsel submitted that the action is also statute barred under Section 20 of the FOI Act, which provides that:


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Any applicant who has been denied access to information, or a part thereof, may apply to the Court for a review of the matter within 30 days after the public institution denies or is deemed to have denied the application, or within such further time as the Court may either before or after the expiration of the 30 days fix or allow.

For the 2nd Respondent, it was argued that statutory exemptions circumscribe the right of access to information. Counsel submitted that Nigerian cyberspace is regulated by the Cyber-Crime Act, which operates throughout the Federal Republic of Nigeria to protect national information infrastructure, promoting cyber-security, networks, and data. To this extent, that the Nigerian government reached an agreement with Twitter as a precondition for resuming operations within Nigeria's cyberspace, a matter of national security. Further, that Section 15 of the FOI Act permits non-disclosure where it may cause harm to the interests of a third party. By implication, Twitter is an international company that operates all over the world and has contractual agreements with the jurisdiction in which it operates. The disclosure of the Nigerian agreement with it would reveal the privileged and confidential provisions peculiar to the Nigerian state and cause harm to Twitter's interest and relationship with other states.


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RESOLUTION

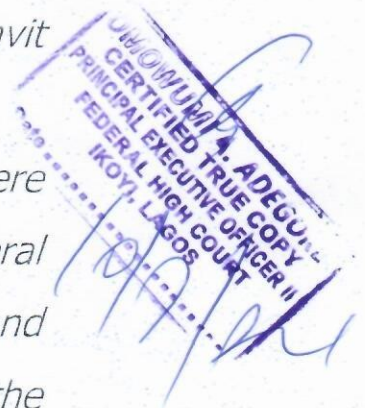
I have considered all the submissions of counsel. It is important first to address some preliminary issues that form the basis of this case. The Applicant, in its response to the 1st Respondent's counter-affidavit, raised objections to specific paragraphs thereof on the basis that they violate Section 115(2) of the Evidence Act 2011 which forbids affidavits from containing arguments or conclusions or extraneous matters.

The contested paragraphs, being 4(n) and (o) of the 1st Respondent's counter affidavit, are challenged on the grounds of being speculative, argumentative, and containing extraneous matters. To provide a clear understanding, these paragraphs are reproduced below:

(n) that the purported terms and conditions stated in paragraph 12 of the Plaintiff's affidavit supporting the motion are fallacious.

(o) that assuming but not conceding that there were terms and conditions between the Federal Republic of Nigeria, the said terms and conditions are not within the purview of the Freedom of Information Act as same fall under confidential information and under exceptions to the act which cannot be disclosed.

A careful examination of these provisions reveals their argumentative nature. Paragraph (n) dismisses the Applicant's claims as "fallacious," which indicates a conclusory and argumentative stance. Similarly, paragraph (o) employed arguments and conclusions distinct from



"facts", as the 1st Respondent should state in the counter affidavit. In light of Section 115(2) of the Evidence Act, these paragraphs violate the statutory requirement by introducing conclusory and legal argumentative content. Consequently, paragraphs 4(n) and (o) of the 1st Respondent's counter-affidavit are hereby struck out. See **Buhari v INEC & Ors (2008) LPELR-814(SC); Josion Holdings Ltd & 33 Ors v Lormamead Limited (1995) 26 LRCN 1 at 11; Chief Francis B. Edu and 3 Ors v Commissioners for Agriculture, Water Resources and Rural Development (2001) F.W.L.R. (Pt. 55) 433.**

Secondly, the 1st Respondent argued that the Applicant's application is statute-barred under **Section 2(a)** of the Public Officers Protection Act and Section 20 of the FOI Act. Section 2(a) of the Public Officers Protection Act stipulates that any action, prosecution, or proceeding against a public officer for any alleged neglect, default, or act done in the execution of any law or public duty must be initiated within three months of the act, neglect, or default; or in case of continuance of damages or injury, within three months next after the ceasing thereof. Similarly, Section 20 of the FOI Act, 2011 mandates that an Applicant denied access to information may seek judicial review within 30 days of the denial or deemed denied by the public institution.

Upon a meticulous examination of the Applicant's processes and timeline for initiating this action, it is clear that this argument is based on a fundamental misunderstanding of the applicable principles and the factual circumstances of this case. The Applicant sent a request



letter for the Nigeria Government and Twitter agreement to the 1st and 2nd Respondent on 15th January 2022 and successfully delivered same to the 1st Respondent on 19th January 2022 and the 2nd Respondent on 18th January 2022. See **Exhibits A2, A3, A4, & A5**. Upon a refusal and deemed refusal to avail the requested information within the seven days contained in the letters, the Applicant subsequently filed a Motion ex-parte to commence this suit on 11th February 11, 2022, which was just 23 days after the letter's delivery, inclusive of the seven days' ultimatum given to the Respondents. The Court of Appeal in **OKANU v ANORUIGWE & ANOR (2019) LPELR-48835(CA)** held that the period for determining whether an action is statute-barred is calculated from the date the cause of action accrued, which in this case is 7 days from the date of delivery of the Applicant's letter. Therefore, the 3 months and 30-day periods started on 26th January 2022, and the filing of the Motion ex parte to obtain leave to file the Motion on Notice for application for judicial review on 11th February 2022 was well within the statutory periods. Should this Court hold that the action is statute-barred since the Motion on Notice was filed on 20th May 2022, whereas the Court delivered its ruling granting the Applicant leave to commence the action as required by law on 17th May 2022, it will amount to unjustly penalizing it. This is because such decision will ultimately conclude that the action has been statute-barred within the provisions of the Public Officers Protection Act and the Freedom of Information Act. The Applicant cannot be penalized for delays attributable to the Court's schedule. The Applicant sought leave within the appropriate timeframe and



acted diligently. The Court's delay in fixing a hearing date and granting leave cannot be held against the Applicant. By initiating the suit via a motion ex parte within 23 days of the request letter's delivery, inclusive of the 7-day ultimatum, I am satisfied that the Applicant has met the requirements set forth under Section 2(a) of the Public Officers' Protection Act and Section 20 of the FOI Act. I therefore overrule the objections raised against the competence of the suit.

On the substance of this application, I have thoroughly examined all the affidavit evidence and supporting materials. Section 1 of the FOI Act grants individuals the right to access or request information held by any public institution or agency. However, this is subject to exemptions such as in Section 14 of the same Act, under which the Respondents pitchfork their refusal to release and publish the twitter agreement as requested by the Applicant. A dispassionate appraisal of Section 14(1)(a-e) of the Act shows that none of the exemptions apply to the peculiar facts of this case. Section 14(1)(2)&(3) provides thus:

14-(1) Subject to subsection (2), a public institution must deny an application for information that contains personal information and information exempted under this subsection including –

(a) files and personal information maintained with respect to clients, patients, residents, students, or other individuals receiving social, medical,



educational, vocation, financial, supervisory or custodial care or services directly or indirectly from public institutions;

(b) personnel files and personal information maintained with respect to employees, appointees or elected officials of any public institution or applicants for such positions;

(c) files and personal information maintained with respect to any applicant, registrant or licensee by any government or public institution cooperating with or engaged in professional or occupational registration, licensure or discipline;

(d) information required of any tax payer in connection with the assessment or collection of any tax unless disclosure is otherwise requested by the statute; and

(e) information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies on the commission of any crime.

(2) A public institution shall disclose any information that contains personal information if -

(a) the individual to whom it relates consents to the disclosure; or

(b) the information is publicly available.




(3) Where disclosure of any information referred to in this section would be in the public interest, and if the public interest in the disclosure of such information clearly outweighs the protection of the privacy of the individual to whom such information relates, the public institution to whom request for disclosure is made shall disclose such information subject to Section 14 (2) of this Act.

Section 14(1) above mandates the protection of personal information held by public institutions and includes exemptions such as files on clients, patients, employees, tax-related information, and the identities of complainants and informants. However, this section does not apply to the facts of this case since the Applicant is requesting access to a government agreement, not personal information. The agreement with Twitter is clearly a public matter, and is not personal to anyone. Therefore, the protections under Section 14(1) are irrelevant to this case, as the Applicant's request does not involve disclosing personal information but relates to an agreement between the government and an international company that plays in the social media and public data space.

Section 15(1) of the FOI Act, which is relied upon to refuse the release of the requested agreement states thus:

15(1)-A public institution shall deny an application for information that contains-

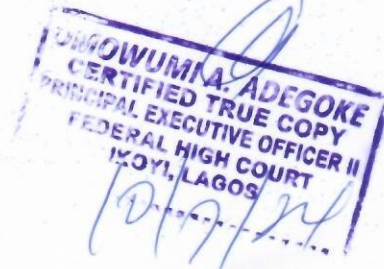

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(a) trade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged, or confidential, or where disclosure of such trade secrets or information may cause harm to the interests of the third party provided that nothing contained in this subsection shall be construed as preventing a person or business 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.

By way of construction, this provision mandates that Twitter's trade secrets and commercial or financial information, if proprietary, privileged, or confidential, or if their disclosure might harm the interests of Twitter as a third party, and contained in the requested agreement it has with the Nigerian Government, must not be disclosed. All exemptions, including the foregoing within the FOI Act, are subject to the "public Interest," in having them disclosed. Thus, Section 15(4) of the FOI Act which states that:



A public institution shall disclose any information described in subsection (1) of this section if that disclosure would be in the public interest as it relates to public health, public safety or protection of the environment and, if the public interest in the disclosure clearly outweighs in importance any financial loss or gain to, or prejudice to the competitive position of or interference with contractual or other negotiation of a third party.

By implication of the above, although Section 15(1)(a-c) protects the disclosure of the agreement had between the Nigerian government and twitter as doing so will undermine the interests of twitter in the manner described in Sections 15(1)(a-c), the agreement must still be disclosed irrespective of the harm to twitter if it would be in the public interest to make such disclosure. The problem is that "public interest" in the context of the FOI Act is a closely and precisely defined concept which is not at large. Therefore, to be eligible for disclosure, it must be sufficiently and credibly proved that the agreement between the Government of Nigeria and Twitter relates to 1) public health, public safety, or protection of the environment; and 2) the public interest in the disclosure outweighs the importance of any financial loss or gain, or prejudice to the competitive position or interference with contractual or other negotiation of Twitter, the third party. That begs

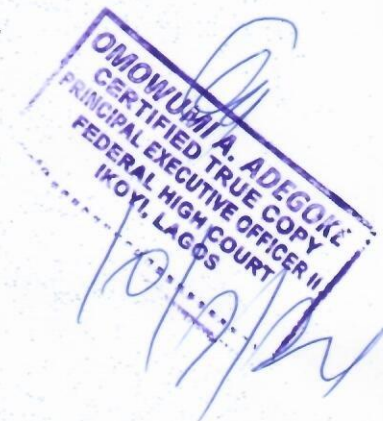


the fundamental question: On what grounds of "public interest" was this application brought? Moreover, what commercial interest of Twitter will be affected by the disclosure of the requested agreement?

In assessing the claims of the Applicant, particular reference is made to relevant paragraphs of the affidavit namely:

9-That on Friday, 4th June, 2021, the Ministry of Information through a statement signed by Segun Adeyemi, media aide to the Minister of Information indefinitely suspended the operations of Twitter in Nigeria's cyberspace due to what it termed as "Twitter's undermining of Nigeria's corporate existence"

10-That an excerpt of the statement by the 2nd Respondent reads "The Federal Government has suspended, indefinitely, the operations of the microblogging and social networking service, Twitter, in Nigeria due to the persistent use of the platform for activities that are capable of undermining Nigeria's corporate existence."



From the above, it is clear that twitter was from the beginning ostensibly suspended from operating in Nigeria's cyberspace solely to protect the country's corporate existence. The same ban was lifted after Twitter agreed with the Nigerian government on some terms and conditions for its operation in Nigeria's cyberspace, and the

Respondents have not denied the existence of such an agreement. In paragraph 12 of the Applicant's affidavit, it was stated that:

12-That on midnight of 13th January 2022, the Federal Government of Nigeria lifted ban on access to Twitter in Nigeria after 222 days. That in the news report that I monitored on Channels TV and the British Broadcasting Corporation (BBC), the ban on Twitter operations in Nigeria was lifted after the Minister of Information informed the public that Twitter Inc. and Nigeria agreed on some terms and conditions on the operation of Twitter in Nigeria's cyberspace.

By paragraph 13 of the Applicant's affidavit evidence, the Applicant requested a copy of the agreement to know whether it complies with Nigeria's domestic fundamental human rights laws and international treaties to which it is a party. The said paragraph 13 of the Applicant's affidavit states:

13-That in the pursuit of its mandate and in accordance with the Freedom of Information Act, 2011, the Applicant wrote a letter dated 15th January 2022 to the 1st and 2nd Respondents, requesting him to direct the Minister of Information and Culture to provide the Applicant with the following:



i. A copy of the agreement recently signed with Twitter, Inc., and to widely publish the details of any such agreement.

ii. To clarify the manner and scope in which the agreement with Twitter will be enforced, including whether the agreement incorporates the provisions of Chapter IV of the Nigerian Constitution 1999 [as amended] on fundamental human rights, and the country's obligations under the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights.

However, it should be noted that a difference exists between what is genuinely in the public interest and what merely piques public curiosity. While paragraph 13(i) of the affidavit appears to pique public interest without a legitimate intention as it discloses no reason for the request, paragraph 13(ii) seeks clarification on the scope and enforcement of the agreement to ensure it complies with fundamental human rights laws. Although both paragraphs 13(i) and 13(ii) of the affidavit can be read together as intending to achieve the same purpose, paragraph 13(ii) can also be read in isolation and still be sufficient to ground the present application. For emphasis, matters of human rights enforcement fall within the ambit of public interest, as can be gleaned from a holistic understanding of Section 15(4) of the FOI Act.

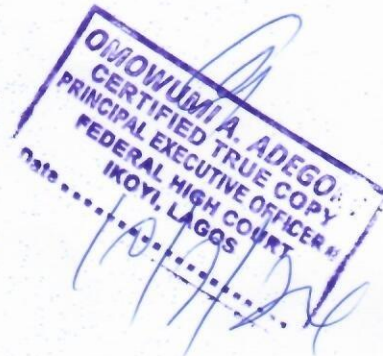
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Thus, a public institution may grant a request for information on human rights protection grounds within Section 15(4) of the FOI Act, provided that the importance of granting the same outweighs the commercial interests of the third party. Particularly, Order 1 Rule 2 of the Fundamental Rights Enforcement Procedure Rules 2009 provides that public interest "includes the interest of Nigerian society or any segment of it in promoting human rights and advancing human rights law." Again, in determining what qualifies as public interest in the FOI Act, paragraph 3.1.3(d) of the Guidelines on the Implementation of the Freedom of Information Act 2011 Revised Edition 2013 as issued by the Honourable Attorney General of the Federation and Minister of Justice recognizes the following factor as constituting public interest:

Allowing individuals and companies to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those.



On the basis of the above, I am of the view that the Applicant has a legitimate reason to wish to be availed of the agreement, which aim is to understand how the agreement affects them and other Nigerians as far as the protection of the human rights of Nigerians are concerned. Although the above quoted Guidelines was not availed the Court by any of the parties in their processes, by Section 122 of the Evidence Act 2011, I am empowered to take judicial notice of facts that do not require proof, such as the clarity derived from the Guidelines. See **INEC & Anor v Asuquo & Ors (2018) LPELR-SC;**

FAROLY v ESTABLISHMENT (2011) 5 NWLR (pt. 1241) p. 457 @ 47. See also **CBN v Amao & Ors (2007) ALL FWLR (Pt 1614) 1490**, where it was held that circulars convey Government policy and serve as the mouth-piece of the Government and cannot be ignored by the Court. See also **Nigerian Breweries v Oyo BIR (2012) – CA/I/M.25/2007**. Therefore, the Freedom of Information of Act Implementation Guidelines is a Government circular that the Court can rightly take judicial notice of.

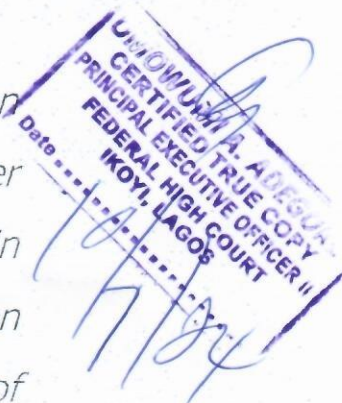
Additionally, the question that still needs to be answered is how the need to disclose the agreement is outweighed by the importance of protecting the commercial interests of the third party, Twitter. The Respondents have unequivocally argued that the disclosure could harm Twitter's business interests in other jurisdictions, potentially interfering with its contractual negotiations. However, this defence is hypothetical and does not point to the specific business or contractual interests that could be affected. Besides, Section 15(4) of the FOI Act envisages only real and not hypothetical financial loss or gain to, or prejudice to, the competitive position of or interference with contractual or other negotiation of a third party, which could be affected by the disclosure. No evidence was placed before this Court pointing to the fact that Twitter has an agreement with another country as a precondition for its operation in such jurisdiction as obtainable in Nigeria. It is my view that disclosure of the requested agreement will not interfere with the commercial interests and trade



secrets of Twitter or lead to financial losses to it; as the Respondents have failed to prove same.

Furthermore, another point of controversy is whether the need to disclose the agreement for public interest is subject to the need to protect national sovereignty, as argued by the Respondents. National sovereignty depending on context is synonymous with national security. In most cases, the need for national security outweighs public interest, including protection of fundamental human rights. See Section 45 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). In this case, however, I am of the view that the reason for the refusal to disclose the agreement do not come within the need to protect national security and sovereignty. It is a defence predicated on the Cybercrimes (Prohibition & Prevention Act), 2015, and they have failed to prove how the Act relates to the agreement other than mentioning same. More than merely linking the requested agreement to the "critical national information infrastructure" in section 3 of the Cybercrime (Prevention and Prohibition) Act 2015, nothing more is said about its relevance and how it supports non-disclosure of the agreement. For clarity, Section 3 of the Cybercrime (Prevention and Prohibition), Act 2015 provides:

3(1)-The President may on the recommendation of the National Security Adviser, by Order published in the Federal Gazette, designate certain computer systems, networks and information infrastructure vital to the national security of



Nigeria or the economic and social wellbeing of its citizens, as constituting Critical National Information Infrastructure.

(2) The Presidential Order made under subsection (1) of this section may prescribe minimum standards, guidelines, rules or procedure in respect of -

(a) the protection or preservation of critical information infrastructure;

(b) the general management of critical information infrastructure;

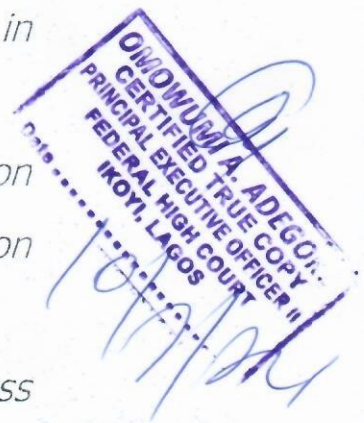
(c) access to, transfer and control of data in any critical information infrastructure;

(d) infrastructural or procedural rules and requirements for securing the integrity and authenticity of data or information contained in any critical national information infrastructure;

(e) the storage or archiving of data or information regarded critical national information infrastructure;

(f) recovery plans in the event of disaster or loss of the critical national information infrastructure or any part of it; and

(g) any other matter required for the adequate protection, management and control of data and



other resources in any critical national information infrastructure

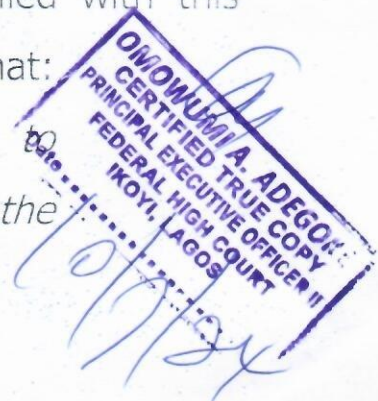
As provided by Section 3(1) of the Act above, the Respondents have failed to prove that the President has followed due process of law to designate Twitter as a Critical National Information Infrastructure upon the National Security Adviser's recommendation and issued an Order in the Federal Gazette in that regard. As such, the Act cannot apply to this case, and the protection that would have availed the Respondents is exempted. From a holistic analysis of the 1st and 2nd Respondent's counter affidavit, they also failed to prove how the requested Nigeria Government and Twitter agreement came within the protection of the Official Secrets Act LFN 2004. Therefore, I hold that the disclosure of the requested agreement is not prejudicial to Nigeria's sovereignty and national security or protected by the Official Secrets Act, as the Respondents have failed to prove same.

The provision of Section 24 of the FOI Act is quite instructive. The provision is to the effect that:

In any proceeding before the Court arising from an application under Section 20, the burden of establishing that the public institution is authorized to deny an application for information or part thereof shall be on the public institution concerned.

The Respondents clearly do not seem to have complied with this provision. And the referenced Section 20 also provides that:

Any applicant who has been denied access to information, or a part thereof, may apply to the



Court for a review of the matter within 30 days after the public institution denies or is deemed to have denied the application, or within such further time as the Court may either before or after the expiration of the 30 days fix or allow.

OMOWUMI A. ADEGOKE
CERTIFIED TRUE COPY
PRINCIPAL EXECUTIVE OFFICER II
FEDERAL HIGH COURT
IKOYA, LAGOS
Date:

As already noted, the Applicant's lawsuit falls within the framework of Section 20 of the FOI Act.

In sum, I believe that the disclosure of the requested agreement between the Nigerian Government and Twitter to the Applicant solely to ascertain its impact on the fundamental human rights protection of Nigerians is in the public interest and does not affect Twitter's business interests as a third party. It is also not prejudicial to Nigeria's sovereignty and national security.

In the event, the suit succeeds. Judgment is entered for the Applicant on the following terms:

Reliefs 1 and 2 are granted, not as prayed but simply as directing the 2nd Respondent to provide a copy of the agreement requested for to the Applicant to enable the Applicant to study same and come to an assessment of whether the agreement incorporates the provisions of Chapter IV of the Nigerian Constitution 1999 [as amended] on fundamental human rights and Nigeria's obligations under the African Charter on Human and People's Rights and the International Covenant on Civil and Political Rights. The obligation of the 2nd Respondent is limited to availing the Applicant with a copy of the

agreement, and thus not extend to publishing same for the readership of the public as the Applicant has claimed. I do not see what benefit asking the 2nd Respondent to publish the agreement for the reading pleasure of the general public would serve, other than the craving to promote unnecessary sensationalism

For good measure, the case fails against the 1st Respondent as I do not see what role the 1st Respondent, the President of the Federal Republic of Nigeria, has to play here or the justification for his inclusion in the lawsuit, other than the craving to promote unnecessary sensationalism.

No order is made as to costs.

HON. JUSTICE NNAMDI O. DIMGBA
JUDGE
28 | 05 | 24



PARTIES: Absent

APPEARANCES: Valentina Adegoke, Esq. for the Applicant.

*15 caps
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for judgment
on 10/7/24*



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