

10 March, 2014

The Honourable Attorney General of the Federation

Barr. Mohammed Bello Adoke (SAN)
The Honourable Attorney General of the Federation and Minister of Justice,
Federal Ministry of Justice,
Shehu Shagari Way,
Abuja

Dear Sir,

**FOI PETITION: THE WRONGFUL AND UNLAWFUL DENIAL BY THE
UNIVERSAL BASIC EDUCATION COMMISSION (UBEC) OF PUBLIC ACCESS
TO ITS PROCUREMENT PLANS AND OTHER PROCUREMENT RECORDS**

In line with your oversight responsibility under the Freedom of Information Act 2011, to ensure that all institutions to which this Act applies comply with the provision of the Act, and on behalf of Nigerian Procurement monitors, we bring to your notice and solicit your quick action on the refusal of the Universal Basic Education Commission (UBEC) to make public its procurement plans in accordance with the Freedom of Information Act (FOIA) 2011. UBEC has also refused to abide by the timeline of 7 days stated in the FOIA 2011 and has informed procurement monitors that regarding some categories of the information requested, these would be provided when they are ready. It is now 5 weeks since the request was made and no information has been provided.

OUR REQUEST TO UBEC.

On the 27th of January, 2014, a request was made for the procurement plans of the UBEC. Again on the 5th of February, 2014, another request was submitted for the procurement records for printing and distribution of books which was awarded in 2012.

After making an FOI request for access to its procurement plans, UBEC invoked S15 (1) (C) of the Freedom of Information Act (FOIA) 2011 to deny the sought procurement plans.

S15 (1) (C) states that:

A public institution shall deny an application for information that contains proposals 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.

The Universal Basic Education Commission also informed us that information on awarded contracts would be provided when it is ready rather than in 7 days or after a further extension of 7 days as provided by Sections 4 and 6 of the FOIA 2011.

OUR APPLICATION OF THE LAW

In view of the constitutional provision in Section 14(2) (c) that the participation of the people in their government shall be ensured in line with the constitution, several legislations have been passed to give life to this. This includes the S19 (b) of the Public Procurement Act which provides a legal basis for citizens to monitor every Public Procurement process. In order to monitor these processes, the FOIA 2011 has provided the right of access, of everyone interested, to public expenditure related information which includes procurement plans.

The UBEC however contends that procurement plans if disclosed, would frustrate procurement or give an advantage to any person.

Procurement monitors take the view that this stance is erroneous as procurement plans only articulate the expenditure plans of government, the justification of proposed goods, works and services, the proposed timelines and expenditure estimates for the release of such documents. Disclosure of Procurement plans cannot in any way affect procurement proceedings. Indeed, procurement plans are the starting point to know what your government intends to do to meet the needs of primary education in the year and how much it would spend to achieve this. Not having access to the procurement plan means that citizens cannot follow up with the commitments of UBEC, and if it is the case that no procurement plans exist, then it would be difficult to measure how well the commission is meeting its objective.

That is why S2(3)(v) of the FOIA provides that:

A public institution shall cause to be published in accordance with subsection(4) of this section, the following information-

Information relating to the receipt or expenditure of public funds of the institutions;

Whilst subsection(4) provides that:

A public institution shall ensure that information referred to in this section is widely disseminated and made readily available to members of the public through various means, including print, electronic and online sources, and at the offices of such public institutions.

If the estimates for spending contained in the procurement plans may give undue advantage to anyone, this would imply that the only consideration for awarding any of these contracts is the price and not the necessarily skill sets; it would also mean that there are no standard pricing benchmarks which would be contrary to the provisions of the Public Procurement Act 2007 and if such information would deem to grant one person undue advantage because only him has access to the said document, then UBEC should have done well to proactively disclose procurement plans as provided by S2(3)(v) and S2(4) of the FOIA so that everyone would have the opportunity for equal and simultaneous access to the procurement plans. However, relying

on their breach of proactive disclosure provisions within the FOIA to deny disclosure when requested for is unlawful and wrong.

We have drawn UBEC's attention to S2(3)(v) and S2(4) of the FOIA which requires such information to be made readily available however, UBEC claims that procurement plans do not fall under expenditure related information.

The UBEC has also refused to abide by the timelines of 7 days to provide details of awarded contracts in 2012 and 2013 as we requested for. According to Section 4 of FOIA, 2011,

Where information is applied for under this Act, the public institution to which the application is made shall, subject to Sections 6, 7 and 8 of this Act, within 7 days after the application is made,

(a) Make the information available to the applicant.

Section 6 of FOIA further provides for extension of timeline as follows:

The public institution may extend the time limit set out in section 5 or 6 in respect of an application for a time not exceeding 7 days.....

In spite of the above provisions, UBEC has reiterated twice, on the same subject matter, that they would only provide the information when it is ready. This is in breach of the FOIA and disregards the role timely access to information plays in allowing citizens participation in their Government.

Timely access to information such as for procurement plans often makes the difference on whatever intervention can be made. That is the reason why the FOIA places a period of 7 days to access such information. If the time for release of information is disregarded, the value of timely access to information is lost. It is for this same reason that the FOIA provides for proactive disclosure of routine public expenditure information and also places limitations on extension of time for responding to a request. In spite of all this, UBEC has refused to provide the information sought.

The best way for procurement monitors to follow up on plans for acquiring public goods, works and services is through procurement plans because these have the planned periods for various procurement activities and would enable us look out for such activities in the national dailies. However, UBEC contends that we should look out for their advertisements in the national dailies in order to follow their procurement processes. This is overly burdensome and does not speak to the ideal of transparency that UBEC claims to stand by for several reasons; a few of which are:

1. There are several national dailies being circulated in Nigeria. Not knowing the period to expect an advertisement would mean that procurement monitors would need to buy all the national dailies everyday for the rest of the year to follow up on the plans of

UBEC. This is definitely a huge burden and excludes people who cannot afford to buy every national daily newspaper.

2. Secondly, it would be difficult to tell whether UBEC has advertised all its procurement processes as is generally required under the default open competitive bidding because it would be impossible to tell whether all procurement processes have been advertised (or not advertised perhaps as a result of a restricted tendering method)
3. Thirdly, these tactics make light of any transparency agenda, make light of the Constitution of the federal republic of Nigeria and make light of the FOIA by using erroneous reason to stop citizens from participating in their government.

We are of the view that UBEC makes light of the functions and responsibility of a government when they put forward the attitude that they are not in the least obliged in practise to be accountable to its citizens and in the light of these, we call on your office, which has the oversight responsibility under this Act to ensure that all institutions to which this Act applies to comply with its provisions to promptly call UBEC to order. Considering the mandate of the Universal Basic Education Commission to develop a more inclusive Primary Education scheme and the rising number of out of school children in Nigeria as documented by independent reports of the United Nations, it is only reasonable and expected that citizens would request to know the plans of the commission for the year in providing goods, works and services and it is wrongful, unlawful and unreasonable for the commission to deny us access to the procurement plans of the commission.

OUR REQUEST

In view of the above, and in view of your oversight role conferred on you by the FOIA to ensure compliance of public institutions with the law, we request for the following remedies:

1. That you compel UBEC to release its procurement plans to Nigerian Procurement monitors
2. That you compel UBEC to make these plans proactively available on its current website and at its offices so that there would be equal, simultaneous distribution of information
3. That you compel UBEC to honour the timelines of 7 days provided by the FOIA
4. Based on your decision reached, that you issue a directive to all Ministries Departments and Agencies to comply with the S2 of the FOIA and make categories of information requested therein publicly available and
5. Finally that you provide specific timelines for the fulfilment of the obligations in numbers 1 to 4 above.

We thank you and anticipate your quick action and ask that you kindly direct any enquiries regarding this petition through mobile phone on **08029455583** or through email at: seember@procurementmonitor.org. For any hard copy correspondence or physical meeting, we can also be reached at our Abuja office as shown on the letter head above.

Faithfully,

Seember Nyager

**CEO, Public and Private Development Centre
On behalf of the Nigerian Procurement Monitors**

Attached: Copies of correspondence between PPDC and UBEC.