

REPUBLIC OF NIGER

Fraternity-Work-Progress

Ordinance N° **2011-22**

of 23 February 2011

On the Charter on Access to Public
and Administrative Documents

THE PRESIDENT OF THE SUPREME COUNCIL FOR THE RESTORATION OF DEMOCRACY, HEAD OF STATE

Mindful of the Constitution of 25 November, 2010;

Mindful of Ordinance n° 2010-001 of 22 February 2010 on the organization of public authority during the period of transition and subsequent modifying texts;

Based on the report of the Minister of the Public Service and Labour

The Council of Ministers consulted;

DECREES:

Chapter one: General Provisions

Article one: The present ordinance defines the general rules to access public information and administrative documents

Article 2: Public information is all data or knowledge produced or received by public services in the conduct of their mandate either through research or experience in written, graphic, video, audio or audio-visual form.

By this ordinance, public services are bodies with a public interest function or all public or private bodies assigned a similar mission.

Article 3: Subject to the provisions of articles 13, 14 and 18 below, public bodies and private bodies performing public functions, in possession of documents or information of general interest, are required to make them available to the public. The conditions to disclose this information are determined by this decree.

Chapter II: The Right of Access to Public Information and Administrative Documents

Article 4: Access to public information is free, subject only to exceptions and deadlines provided by the law.

Public information is accessible as a matter of right to anyone who makes a request in accordance with the present ordinance.

Article 5: Access to public information is guaranteed and equal for all users of public services without discrimination.

Article 6: Everyone has a right to know any information held about him in administrative documents or those whose conclusions could be invoked against him

Article 7: Access to public documents is exercised within the technical capacity of the administration and the modalities laid down in article 18 below.

Article 8: The officials mentioned in article 16 below are required to make available and to disclose administrative documents and information in their possession to all persons who request it within the framework of this ordinance.

Article 9: The right of access applies only to completed documents. It does not apply to preparatory documents for administrative decisions that are still being elaborated. It no longer operates on documents that are already subject to disclosure.

The transfer of accessible administrative documents to the public archives does not obstruct the right to access them at anytime.

Article 10: Where a request is made to a public body or private entity performing public functions and the entity is not in possession of this information, the entity can direct the requestor to the organization that possesses this information.

Article 11: A public body is not obliged to respond to requests made abusively as multiple or repetitious requests.

Chapter III: Accessible and non-accessible information and documents

Article 12: The following information or administrative documents are accessible by this ordinance: all documents, reports, studies, guidance or policy documents, reviews, minutes, statistics, directives, instructions, circulars, service notes and ministerial responses that consist if an interpretation of the law or a description of administrative procedures, opinions, forecasts and decisions

Also accessible are administrative documents or personal data at the request of the concerned individual without grounds of refusal as privacy, medical secrets or protection of commercial or industrial secrets being evoked against them.

Private documents are those that carry an opinion or value judgment of a physical, named or easily identifiable being or documents that carry a description of someone's behaviour in a way that if disclosed in one way or another would cause him/her prejudice.

Article 13: Documents which are not accessible are those which by their very nature or subject are not administrative or information which if disclosed will compromise the smooth functioning of the administration, infringe on private life or interest; especially industrial or commercial secrets.

Documents or information can neither be consulted nor disclosed if they would infringe on:

- The deliberation secrets of the Government and any authority within the scope of the executive
- National defence secrets
- The conduct of Niger's foreign policy
- State security, public security/safety or security of persons
- The currency or public credit
- The course of proceedings in courts or preliminary operations of such proceedings, except where authorization is granted by a competent authority

This restriction applies to all public information whose disclosure is prohibited by law and other specific regulations

Article 14: The following information or public documents are disclosed only to the persons concerned, save for the existence of legal provisions to contrary;

- information whose disclosure could infringe on privacy, medical secrets ,commercial and industrial secrets;
- carrying an opinion or value judgment of a physical, named or easily identifiable person
- carrying the description of someone's behavior in a way that disclosure could cause him prejudice

Medical information is accessible only to the person concerned if h/she so wishes or through a medical officer designated for that purpose and in respect of the provisions of the Public Health Code.

Chapter IV: Procedures to access public information

Article 15: Departments that produce or hold public information shall make available to the public a register of main documents in which this information can be found.

Article 16: The officials responsible for providing access to administrative documents and information are:

- Senior officials of central and decentralized state institutions;
- Heads of public projects and programmes
- Local authorities
- Directors of public institutions and enterprises
- Heads of public bodies as well as those of private sector bodies charged with a public service function.

Article 17: Conditions for re-use of public information as well as the bases of calculating any fees payable are provided to requestors by the departments that produce or hold the requested information

Article 18: The mode of access to administrative documents is based on the choice of the requestor and the technical capabilities of the department:

- a) By means of free on-site consultation, except where this is precluded by considerations relating to the preservation of the document
- b) Except that its reproduction does not jeopardize the preservation of the document, by means of the issue of a copy on a medium identical to or compatible with that used by the administration, and at the expense of the applicant, provided that such expense shall not exceed the cost of the reproduction, and subject to conditions established by decree;
- c) By e-mail, and without cost, if the document is available in electronic format.

Article 19: All requests to access administrative documents must be in writing.

An acknowledgement of receipt must be given to the applicant

The administration is required to provide a written response with reasons to the request within fifteen (15) days of the date on which the request was received. However, requests from researchers and journalists should be dealt with within five (05) days.

Article 20: Notification of refusal of access to a document must be in writing with reasons

If a competent authority to whom a request for access to documents is made maintains silence for more than seven (07) days and more than five (05) days for a request from a researcher or journalists, this is equivalent to refusal.

The person concerned can resort to all administrative or judicial redress procedures that accrue to him under the law.

Chapter V: Notification and Publication of Administrative Documents

Article 21: Except for a provision indicating an deemed refusal or a tacit approval, any decision taken relating to an individual in the name of the state, local authority, a public body or a private body performing public functions, is not binding upon the individual unless h/she had been notified of this decision beforehand.

Article 22: Users of public services have a right to be informed of the reasons for individual or collective administrative decisions concerning them that are unfavourable. The obligation to give reasons applies especially to decisions that:

- Impose sanctions
- Refuse a benefit whose award constitutes a right for persons who have to meet certain legal requirements to obtain them
- Subject the granting of an authorization to restrictive conditions or imposes constraints
- Withdraws or repeals a decision that creates rights
- Prevent a prescription, foreclosure or a disqualification

The decision should be in writing and state the legal and factual reasons that informed the decision. The rules regarding the reasons for administrative decisions are specified by decree.

Article 23: Without prejudice to provisions related to the publication of laws and regulations; the following are subject to regular publication: directives, instructions, circulars and service notes that constitute an interpretation of positive law or description of administrative procedures.

Chapter VI: Receiving and Guiding Users of Public Services

Article 24: Every administration should ensure that there exist in its premises a welcome and information centre at its service for reception and guidance of the public.

This service is required to pass on to users exact information on procedures and formalities to obtain the services they provide.

Article 25: In order to facilitate the reception of users, each administration should have a sign post of its departments which should carry the following as the case may be:

- Very visible arrows indicating the location of various blocks, offices and access stairs;
- Below each staircase or main entrance, a board indicating the number of floors;
- On each floor or intersection of corridors a board carrying precise information on the departments located there, partition of offices and the nature of issues they handle;
- The door of each office should have a plaque on its door bearing the name(s) of occupant(s);
- Within the office each table should have the name and position on desk name blocks.

Article 26: It is required to have at the welcome desk an initialed and regularly checked register for users to record complaints and suggestions.

Chapter VII: Appeal Procedure and Penalties

Section 1: Appeal Procedures

Article 27: When a user is aggrieved by the decision of an administration or a private body performing public functions in matters of access to information, the following procedures for appeal are available:

- Informal appeal
- Administrative appeal
- An appeal with the ombudsman
- Appeal to court

Appeals are exercised in accordance with the texts in force.

Article 28: The Ombudsman is charged with overseeing the respect of citizens' right of access to public information as outlined in this ordinance.

Article 29: If a citizen facing difficulties to access public information lodges a complaint with the ombudsman, the ombudsman gives an opinion with ten (10) days of the submission of the complaint in his secretariat. The Ombudsman shares this opinion with the aggrieved citizen and the accused institution.

The accused institution has a maximum of ten (10) days from the reception of the opinion to inform the Ombudsman of how it intends to treat the citizen's request. Any silence by the accused institution beyond 10 days is deemed a refusal of access.

Article 30: The Ombudsman is required to include the difficulties citizens face in the exercise of their right to access public information in his annual report to the President of the Republic

Article 31: An appeal to court by any aggrieved citizen in matters of access to public information and administrative documents should be lodged at the Council of State.

Section 2: Penalties

Article 32: Any administrative authority or agent of a service found guilty of refusing to provide or obstructing access to public information and administrative documents in his/her possession or has knowledge of them in course of service, will incur the penalties laid down by laws and regulations in force.

The administration is obliged to compensate for the prejudice that resulted.

Article 33: Any administrative authority or agent of a service found guilty of disclosing inaccessible information or documents listed in articles 13 and 14 of this ordinance shall be liable to disciplinary sanctions, without prejudice of sanctions laid down by the laws in force.

Any user of public services found guilty of circulating non-accessible public information or documents shall be subject to sanctions provided by the laws in force.

Notwithstanding any legal provisions to the contrary, any person who discloses or reports actions that constitute wrongdoing, breach of legal obligation, judicial error or grievous acts of negligence in the management of a public administration, shall be protected and be free from all judicial, administrative or professional sanctions.

Chapter VIII: Transitional and Final Provisions

Article 34: The present ordinance comes into effect six (06) months after its date of publication.

Article 35: A decree adopted in the Council of Ministers defines the modalities for the implementation of this ordinance.

Article 36: This ordinance will be published in the Official Gazette of the Republic of Niger and implemented as a national law.

Done at Niamey, February 23, 2011

For Publication:

The General Secretary
of Government

ADAMOU SEYDOU

Signed: The President of the Supreme
Council for the Restoration of
Democracy, Head of State,
Lieutenant General DJIBO SALOU