
Nigeria's Official Secrets Act, 1962: Assessing the Continued Relevance of a Colonial-Era Secrecy Law

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Dr Henry Okolie Onyeoluise¹, Dr Kenneth Owighose Odhe²

¹Law, Delta State University Abraka, Nigeria, ²Law, Southern Delta University Ozoro, Nigeria

Correspondence: Dr Henry Okolie Onyeoluise, henryosem@gmail.com

Abstract

The Official Secrets Act of 1962 serves as Nigeria's main legal structure for safeguarding confidential government information, but it is infrequently implemented through criminal charges. The article explores the assertion that the Act is an inactive piece of legislation by tracing its colonial roots, evaluating its main provisions and penalties, and reviewing its usage since independence. It contends that although the Act is regularly used administratively and as a justification for rejecting freedom of information requests, the discrepancy between its wide application and its scant prosecutorial use leads to legal ambiguity and compromises openness. The study assesses the implications of this dormancy for accountability, journalistic freedom, and national security using legislative analysis, documented examples, and the conflict between the Act and the Freedom of Information Act. It concludes by exploring potential reform strategies, such as implementing a public interest defence and ensuring consistency with both constitutional and international standards.

Keywords: Classified Information, National Security, Unauthorized Disclosure

1. INTRODUCTION

The Nigerian Official Secrets Act, established as Act No. 29 in 1962 and later updated in 1990 and 2004, serves a crucial role in safeguarding the nation's interests. Its primary aim is to thwart espionage, sabotage, and the unauthorized sharing of sensitive state secrets. By protecting classified information vital to national security, the Act ensures that any data or details that could potentially harm the country remain secure and confidential. In essence, it is designed to shield sensitive information that, if revealed, might

jeopardize the well-being of the nation.

The Official Secrets Act has been in force for 64 years, yet remarkably few cases have arisen that directly challenge its provisions. Even these cases tend to focus on secondary issues, such as the constitutionality of certain sections or matters relating to freedom of expression. To date, there have been no prosecutions or convictions for espionage under this Act, nor for disclosing classified information to foreign adversaries or unauthorized parties. While the Act persists in the legal framework, its criminal provisions are seldom activated outside military and security discussions. Government officials often reference the law to caution against leaks, but despite numerous reports of classified information reaching terrorist groups and bandits concerning the Nigerian army, no legal actions have been taken against anyone for breaching the Act. This has led commentators to label it as a dormant legislation.

So, is the Official Secrets Act truly fulfilling its intended purpose? Is it effective in safeguarding sensitive information? Is it achieving the goals for which it was originally enacted? Does the Official Secrets Act 1962 hold any real weight beyond the paper it's printed on? This article aims to tackle these pressing questions. The focus is on critically assessing how effectively the Official Secrets Act, 1962 has protected classified information and whether its prohibitions against unauthorized disclosures have contributed to national security. The discussion will delve into the history, scope, and enforcement challenges of the Official Secrets Act, examining its intersections with Nigeria's transparency laws and pondering whether its lack of activity indicates legal frailty, intentional restraint, or a need for reform.

2. OVERVIEW OF THE ACT

The Official Secrets Act of 1962 is a crucial piece of legislation designed to safeguard classified information related to national security. This law was introduced on September 13, 1962, and is designated as Act No. 29 of 1962. It was enacted shortly after the country gained independence in 1960, and it underwent codification in 1990 and again in 2004 to ensure its relevance and effectiveness¹. The Official Secrets Act 1911 of the United Kingdom served as the model for the Act. It is designed to protect private data that, if revealed, might be detrimental to the nation's interests. It makes it illegal to reveal any government information without a valid reason.² However, a conviction for violating section 5 of the Act carries a maximum fine of E50, three months in jail, or both. The Act has broad applicability. It covers everyone, including foreigners and Nigerians, as well as civilians, civil servants, private individuals, members of the armed forces, the Nigerian police force, the Nigerian customs and immigration services, and other national security organisations. Everyone is subject to the same law. This Act's goal is to safeguard public safety and state security.³

3. THE "DORMANCY" ARGUMENT

3.1 Low Prosecution Rate

Despite numerous leaks, no one has been charged for violating the 64-year-old Act. Reports of confidential state secrets being revealed are widespread in the media. However, neither the origins of the information nor the prosecution are questioned. Vanguard reported on March 14, 2026, that a senior military officer in service disclosed that terrorist organisations operating in Nigeria are receiving classified information from repentant terrorists who were integrated into the country's armed forces. This is detrimental to both Nigerian soldiers fighting terrorism and innocent civilians who are killed as a result of this unlawful disclosure.⁴

¹ *ibid* s1.

² *ibid* s1.

³ *ibid* (n 1), long title.

⁴ Vanguard, 'Repentant Terrorists Leaking Information-Serving Senior Officers' <<https://www.vanguardngr.com>> accessed 27 May 2026.

In January 2019, the Nigerian Army invaded Daily Trust offices in Abuja and Maiduguri, Borno State, to invite media employees to a story in the Sunday publication that, according to the Army, revealed sensitive military information, hence jeopardising national security.⁵ In a recent post, Adenekan expressed his opinion that leaks had been exploited by government officials on multiple occasions, such as during the administration of General Sani Abacha, when they were used against accused coup plotters like General Oladipo Diya and others.⁶

In order to deal with Atiku Abubakar, government personnel under General Obasanjo's administration released information about the Petroleum Technology Development Fund (PTDF).⁷ Under President Goodluck Ebele Jonathan's administration, there were a number of leaks, including Sanusi's case about the Deziani/NNPC Fund.⁸

Those who watched the elections from 2014 to 2025 recall how President Mohamadu Buhari and the APC exploited leaks to their political benefit. According to Adenekan, this implies that members of the opposition and the sitting government collaborated with the media to leak allegedly confidential material. After publishing a material that touched on national security, Samuel Ogundipe was taken into custody.⁹ The federal government issued a warning to civil officials in July 2024 that disclosing official documents might result in jail time. The message was delivered by George Akume, the secretary to the Government of the Federation (SGF), at a workshop held in Abuja by the Bureau for Public Service (BPSR) in association with the Government of the Federation (OSGF) office. "Renewing Hope and Strengthening of National Unity through Effective Communication and the Role of the Official Secrets Act in Maintaining Confidentiality and National Security" was the focus of the workshop.¹⁰

India's colonial past is comparable to Nigeria's. The Indian Official Secrets Act of 1923 has been used to prosecute numerous cases thus far. After military intelligence verified that the material supplied was publicly available, the prosecution withdrew the charges in the *Iftikhar Gilani Case*.¹¹ A journalist who had been detained for publishing a cabinet note was freed on bond in *CBI v Santanu Saikia*.¹² The defendant in *Asif Hussain v State*,¹³ received a nine-year jail sentence for engaging in the illicit exchange of secret documents. An Indian ambassador was found guilty of spying and giving Pakistan vital information in *State v Madhuri Gupta*.¹⁴ It was decided in the *Rafale Deal case*,¹⁵ that leaked documents released by the Hindi could be covered by the Official Secrets Act. The Supreme Court lamented the center's contention in the *Rafale Deal case* case that the Rafale documents released by the Hindi were not admissible due to theft and the Official Secrets Act of 1923. The Official Secrets Act does not prohibit the press from publishing or courts from accepting such materials. Based on the foregoing, it is reasonable to argue that the Indian Official Secrets Act of 1923 is efficient, functional, and fulfilling its billings.

⁵ O. Aluko, 'Why we Invaded Daily Trust Offices – Nigerian Army' <<https://www.punchng.org>> accessed 27 May 2026.

⁶ O. Aluko, 'Why we Invaded Daily Trust Offices – Nigerian Army' <<https://www.punchng.org>> accessed 27 May 2026.

⁷ *ibid.*

⁸ *ibid.*

⁹ *ibid.*

¹⁰ T. Oyedokon, 'Unauthorized Disclosure of Official Documents Carries Jail Term – FG Warns Civil Servants', <<https://www.businessdaying>> accessed 27 May, 2026.

¹¹ Cited in Vajiram and Ravi, *Current Affairs* 12 December 2025.

¹² RC 5/2008/CBI/EO-III/New Delhi reported in Times of India, 6 April 2009, 'Court Slams CBI for Sloppy Srobe in OSA Case' <<https://www.timesofindia.indiatimes.com>> accessed 27 May 2026.

¹³ *Asif Hussain v State* CRL. A. No. 4289 2017 <<https://www.Lawinsider.in/Judg>> accessed 27 May 2026.

¹⁴ SC No.34 (2010) or 'Madhuri Gupta: Pakistan Honey Trap Case that Shook Indian' <<https://www.timesofindia.indiatimes.com>> accessed 27 May, 2026.

¹⁵ *Yashwant Sinha & Ors v Union of India & Ors* (2019) 6 SCC 657. See also *Manohar Lal v Union of India* (2019). 3 SC 292.

The Official Secrets Act 1911 has led to numerous prosecutions of civil servants in the UK in recent years, including Sarah Tisdall and Clive Pointing, as well as other officials, including police officers and former police officers, post office workers, and even a probate office clerk, who "leaked" information about Wills before it was officially released. Between 1945 and 1955, eleven cases under section 2 of the Official Secrets Act 1911 were filed, but only one of them was successful.¹⁶ Thirty-six people were found guilty after fifty-one people and one company were prosecuted between 1955 and 1985. In four instances, charges were dropped. In terms of the prosecution of Act violations, the UK Official Secrets Act 1911 was active, effective, and fulfilled its intended aims over its duration.¹⁷ Regarding the Nigerian Official Secrets Act of 1962, this cannot be expressed with pride.

3.2 The Gap in Enforcement

The Official Secrets Act of Nigeria is only relevant for administrative discipline and warnings to civil servants, and particularly when it comes to rejecting requests filed under the Freedom of Information Act of 2011 rather than for criminal trials. Such cautions are widely reported in the media. For instance, the Federal Government cautioned public servants in May 2020 against disclosing private information without authorisation.¹⁸ Any public official who discloses official material without permission would face harsh consequences, the FG promised. Oluwunmi Ogunmosunle, Director of Information, Office of the Head of the Civil Service of the Federation, issued a statement disclosing this.¹⁹ The head of the federation's civil service, HOS, Dr. Folasade Yemi-Esan, noted with displeasure the unfortunate disclosure of unauthorised official documents in social media.²⁰

Despite these warnings, no federal servant has been charged with violating the Official Secrets Act of 1962. The Official Secrets Act is expressly superseded by Nigeria's Freedom of Information Act 2011. The right of access is applicable "notwithstanding anything contained in any other Act, law, or regulation," according to Section 1(1). Public officials who reveal information in good faith are also granted a defence under Section 27(2). Despite this, agencies continue to reject requests by citing national security and secrecy exemptions found in the Freedom of Information Act, particularly sections 12 and 14. According to The Punch's September 26, 2023, investigative article, federal and state government ministries, departments, and agencies have routinely failed to comply with requests made by individuals and organisations under the Freedom of Information Act.²¹ The majority of MDAs who receive information requests, particularly from civil society organisations, typically refuse to comply with these requests without facing any repercussions.²² Only 10 of the 500 FOI requests that "Budgit," a civic-tech initiative, made received responses from MDAs at the federal and state levels, bemoaning the fact that such procedures impeded openness.²³ An environmental rights protection organization SERAP stated that all its FOI requests from 2020-2024 were neglected by the Lagos State administration.²⁴

In order to stifle the flow of information, officials claim they are "concealing a lot of things" and rely on the culture of secrecy inherited from the Official Secrets Act, Evidence Act, and Criminal Code.²⁵ The Official Secrets Act of 1962 is inactive, non-operational, and only worth the space it takes up in our statute

¹⁶ I. N. Stevens, 'The Official Secrets Act 1989: The Right Balance', (1990) 53 *Modern Law Review* 642.

¹⁷ *ibid.*

¹⁸ D. Yakabu, 'FG Warns Public Officer against Unauthorized Disclosure of Sensitive Information' <<https://www.vanguardngr.com>> accessed 28 May 2026.

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ '175 MDAs Flout FOI Requests Despite Court Rulings' <punchng.com, 2024> accessed 20 June 2026.

²² *ibid.*

²³ I. Uthman, 'FG, Lagos, Others Defy FOI Act Despite Court Rulings' <<http://www.punching.com>> accessed 28 May 2026.

²⁴ *ibid.*

²⁵ *ibid.*

books, aside from cautions to public personnel that unapproved revelation of sensitive material carries jail sentences.

3.1 Reasons for the Dormancy of the Official Secrets Act 1962

The Official Secrets Act of 1962's dormancy or sorry state can be explained by a number of plausible factors, including the need for the Attorney General's approval before prosecution, obstacles related to evidence and the public interest, overlap or conflict with the FOI Act, and the absence of a public interest defence.

i. Requirement of Attorney General's Consent

Before anyone is charged and prosecuted under the Official Secrets Act of 1962, the criminal administration authorities must obtain the Attorney General's approval.²⁶ This means that the police can investigate contraventions of the Act, but cannot file charges or prosecute anybody based on their investigation, without the consent of the Attorney General of the Federation first had and obtained.²⁷ OSA prosecutions are politically delicate, and Attorneys General are political appointees. They typically involve public personnel, journalists, and activists and touch on issues of national security and corruption that embarrass the government. Giving your consent entails assuming responsibility for a case that may result in negative public opinion, media coverage, and diplomatic repercussions. Unless there is direct pressure from the president, the majority of Attorneys General steer clear of it.²⁸

ii. Evidential Hurdles

Establishing 'purpose prejudicial to the safety or interest of the State' necessitates that the prosecution demonstrate the disclosure was made for a purpose detrimental to national security.²⁹ This represents a significant threshold. You need classified documents, handing logs, and testimony from security professionals to establish that the material was classified and that disclosure is genuinely harming security. In a democracy post-1999, security agencies are reluctant to open the papers in open court.³⁰ Doing so risks revealing sources, methods or embarrassing lapses. So, they do not charge the case to court.

Civil servants possess a defence if they were doing their official duties. Since 1999, numerous disclosures have occurred in ambiguous contexts where federal servants assert public interest or whistleblower status. The prosecution must refute that, which is convoluted and labour-intensive. The majority of leaks are now digital. A conviction necessitates forensic proof that associates the document with the defendant. Agencies frequently lack the capacity, and defence attorneys capitalise on deficiencies in the chain of custody.³¹ Prosecutors know they will lose. So, they do not charge. Even when the AG consents, the case collapses at trial.

iii. Public Interest Hurdles

The Freedom of Information Act, 2011 established a public interest defence. Section 1(1) of the Freedom of Information Act stipulates that it supersedes other legislation. Section 27 (2) of the

²⁶ Official Secrets Act Cap. O3 LFN 2004 s 10 (1).

²⁷ *ibid*.

²⁸ Stevens (n 20), Franks Committee, Report of the Departmental Committee on section 2 of the Official Secrets Act 1911 (172) Cmnd 5104 para 17, cited in Hansard HC Deb 15 June 1978 vol. 951 col. 1258.

²⁹ *ibid* ss 1-4.

³⁰ *Global Integrity Crusade Network v Office of NSA & Ors* FHC/ABJ/CS/159/2018, unreported, cited in I. Nnochiri, 'Insurgency War: Lawyer Asks Court to Bar FG from Releasing Details of Spending' Vanguard News, (2018).

³¹ Inspector-General of Police Kayode Egbetokun, 'Welcome Address at Commissioning of Nigerian Police Forensic Laboratory and Digital Resource Centre' <<https://www.npf.gov.ng>> accessed 21st June 2026.

Official Secrets Act 1962 stipulates that an individual is not culpable if he discloses information in good faith pursuant to a legal obligation. Courts currently construe this as a defence in the public interest. In *Uzoegwu v CBN*, the Court of Appeal held that when public interest conflicts with individual confidentiality, public interest takes precedence. Prosecutors recognise that when a defendant invokes public interest, the OSA case becomes tenuous.

iv. **Overriding Clause of Freedom of Information Act**

Section 1 (1)- “Notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request information is ... hereby established.” The effect of this provision is that where the Official Secrets Act says “this is a secret and cannot be disclosed,” the Freedom of Information Act says ‘unless an exemption applies, you must disclose it.’ Courts treat this as the Freedom of Information Act trumping the Official Secrets Act.

The Indian Supreme Court employed identical reasoning in the *Rafale Deals Case*. The Freedom of Information Act provides a defence against prosecution under the Official Secrets Act. According to Section 27 (2) of the Freedom of Information Act, an individual shall not be deemed to have committed an offence under the Criminal Code, Penal Code, Official Secrets Act, or any other legislation solely by virtue of publishing or communicating, in good faith, information that they are authorised to disseminate under this Act. The consequence is that no individual will face prosecution under the Official Secrets Act for disclosing classified material in good faith. For instance *Ugoegwu v CBN* where the Court of Appeal held that public interest in disclosure prevails when it clashes with individual secrecy.

v. **Lack of Public Interest Defence in Official Secrets Act**

The absence of a public interest defence in the Official Secrets Act 1962 contributes to its dormancy. Sections 1-4 penalise the disclosure of 'official information' if it jeopardises the safety or interests of the State. The Act lacks a provision permitting disclosure on the grounds of "public interest."³² Once you prove that the information was official and unauthorized, the act or conduct is an offence. Intent, motive or benefit to the public does not matter under the statute.³³ Nigeria transitioned to democracy in 1999 and enacted the Freedom of Information Act in 2011. Since that time, the perspectives of the public, media, and judiciary transitioned from secrecy to transparency and accountability. These are the reasons behind the absence of OSA convictions.

4. RECOMMENDATIONS

- a. Armed section 8 (1) to require the Attorney General of the Federation to give reasons in writing within 40 days of a prosecution request, why consent to prosecute is denied and publish a redacted version.
- b. Create an independent review panel under the National Human Rights Commission to review refusals for bad faith
- c. Model it on the UK's Crown Prosecution Service guidelines: consent should follow published public interest criteria, not political convenience. This removes arbitrary dormancy, while keeping safeguard against frivolous prosecutions.
- d. Clarify what counts as prejudicial.
- e. Armed the Official Secrets Act to adopt a 3-tier harm test: serious harm, significant harm, no harm. Only serious harm should trigger criminal liability. This matches the UK Official Secrets Act 1989.

³²M. Eze, 'Freedom of Information Act 2011 and the Official Secrets Act: A Clash of Titans' (2012) *Nigeria Law Journal* 1–18.

³³C. Nwabueze, 'Challenges and Implications of Official Secrets Act on Freedom of Information Act in Nigeria' <<https://www.academia.edu>> accessed 19th June 2023.

- f. Allow “public interest immunity hearings” and closed court sessions for classified evidence, as done in the United Kingdom and the United States of America Espionage Act of 1917³⁴ cases. This makes prosecutions visible, without forcing open court disclosure of secrets.
- g. Mandate the Nigeria police and Department of State Security to create a digital forensics unit, trained on chain-of-custody for classified leaks.
- h. Amend the Official Secrets Act to include a public interest defense. Include a clause to wit: ‘it is a defence if the defendant reasonably believed the disclosure was in the public interest and the disclosure was no more than necessary to expose wrongdoing’. Define public interest to include corruption, human rights violations and mismanagement of public funds. Place a burden on the defendant to raise the defense, then on the prosecution to rebut it.
- i. Repeal conflicting provisions in the Official Secrets Act or amend them to state: ‘nothing in this Act prevents disclosure under the Freedom of Information Act 2011 where no exemptions applies’. Update the Freedom of Information Act’s exemption list in section 12 to mirror the Official Secrets Act’s harm-based categories. That way agencies do not need the Official Secrets Act as a fall back. Issue a Federal Government circular directly MDAs to stop citing the Official Secrets Act for refusals in Freedom of Information Act requests. They should cite only Freedom of Information Act exemptions. This eliminates the legal conflict and forces agencies to use the Freedom of Information Act’s narrower, harm-based exemptions.

5. CONCLUSION

The Official Secrets Act 1962 remains on Nigeria’s State books, but in practice, it functions more as a relic of military-era secrecy than as an enforceable law. Four factors mainly explain this dormancy: The Attorney General’s absolute consent requirement creates a political choke point; the evidential burden of proving “prejudice to State security” is nearly impossible without compromising the very secrets in question; the absence of statutory public interest defense leaves courts and prosecutors with no room to balance secrecy against transparency; and the direct conflict with the Freedom of Information Act 2011 gives defendants ready defense that courts have consistently upheld.

In a democracy that guarantees freedom of expression under section 37 of the Constitution and the right to information under the Freedom of Information Act, a law that criminalizes all unauthorized disclosure without regard for motive or public benefit is both unworkable and out of step with public expectations. The result is not the protection of genuine national security interests, but the selective avoidance of a law that would likely fail in court and generate political backlash if tested.

Dormancy, however, does not mean useless. It is not the same as repeal. The Official Secrets Act 1962 still cast a Chilling effect on journalists, civil servants and whistle blowers who cannot be sure when the State will revive it.³⁵ If Nigeria wants a secrecy law that actually protects sensitive information, without undermining transparency and accountability, the path is clear: replace the Official Secrets Act’s blanket prohibitions with harm -based test; introduce a public interest defence; harmonize it with the Freedom of Information Act; and make the

prosecution process transparent and rule-based. Until then, the Official Secrets Act 1962, stands as a dormant piece of legislation-present in form, absent in effect, and a reminder that laws outlive their context only until they are reformed to meet it.

³⁴ Espionage Act of 1917, 18 USC ss 792-799.

³⁵ G. Ezeukwu and F. Nwanze, *Mass Media Law Ethics* (Felucks Communications, 1998) 20.

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