



National Audit Office

Helping the nation spend wisely

P John

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Room RED.3
Reference FOI-420
Date 11 March 2010

Dear Mr John,

FOI REQUEST: CPS ACCOUNTABILITY

Thank you for your email of 23 December 2009 in which you requested information relating to the Crown Prosecution Service (CPS). Your request has been handled under the Freedom of Information Act 2000.

I wrote to you on 25 January 2010 responding to the first two parts of your request. This letter is in response to the final part of your request, which was for instructions, correspondence, guidance, advice or warnings, given to CPS in the last 12 months, concerning its ability to account for the use of public money.

Please find attached copies of the documents which we are releasing in response to this request. I apologise for the delay in releasing this information, which was due to the need to consult with third parties.

In some cases, parts of the documents we are releasing are redacted because they contain:

- personal information (section 40.2(i) exemption); or
- information which would be likely to harm Commercial interests (section 43.2 exemption).

We have identified a further group of documents which fall within the scope of your request but which we have fully exempted from disclosure because their release would prejudice the audit function (section 33 exemption). Details of all the documents that are within the scope of your request and the exemptions we have applied are contained in Annex A. Our reasoning for the application of the exemptions is set out in Annex B.

Annex C to this letter sets out the steps you should take if you are not satisfied with the way in which we have handled your request.



Yours sincerely,

A handwritten signature in blue ink that reads "Julian Wood". The signature is fluid and cursive, with a long horizontal stroke at the end.

Julian Wood
Director of Corporate Affairs

FOI 420 – List of Documents in scope

No	Title Description	Date	Author	Action
1	Audit Strategy Memorandum –CPS 2008-2009	January 2008	NAO	Exempt s.33
2	Audit update Report – CPS 2008/09	March 2009	NAO	Exempt s.33
3	2008-09 Management Report - CPS	September 2009	NAO	Exempt s.33
4	2008-09 ISA 260 Audit Completion Report	June 2009	NAO	Exempt s.33
5	2009-10 Audit Strategy Memorandum	December 2009	NAO	Exempt s.33
6	Good Governance Report Management of Counsel Fees October 09	October 2009	NAO	Release up to Page 8 with s.40 (2) (Personal Information) Redactions. Page 9 – 19 Redacted s.43 (Commercial Interests)
7	Comparative case costs CPS paper	February 2009	CPS	Release with s.40 (2)(Personal Information) Redaction
8	IFRS and FRS Trigger point 2 - Audit report	December 2008	NAO	Exempt s.33
9	IFRS Update Report 2009	December 2009	NAO	Exempt s.33
10	Correspondence Annex – NAO Examination of Charging at the CPS	April 2009	NAO	Release with s.40 (2)(Personal Information) Redaction
11	Correspondence Annex - In-house Advocates, CPS Comparative Analysis of Costs	September 2009	NAO	Release
12	Email string, RE: RCPO merger	August 2009	NAO & CPS	Release with s.40 (2)(Personal Information) Redaction - some redacted information out of scope.

Section 33 of the Freedom of Information Act 2000 provides that:

1. This exemption applies to any public authority which has functions in relation to-
 - a. the audit of the accounts of other public authorities, or
 - b. the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.
2. Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).
3. The duty to confirm or deny does not arise in relation to a public authority to which this section applies if, or to the extent that, compliance with section 1(1) (a) would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

The exemption applies because:

Although the C&AG has statutory access rights to documents and explanations from audited bodies, our audit reports also benefit from free and frank engagement by audited bodies with the audit process. The documents were written with the aim of helping CPS to improve its financial control environment. If the information in these documents was released this would be likely to inhibit the frankness and speed of the exchange between the NAO and CPS and be likely to prejudice the effective performance of future audits. This in turn would ultimately weaken the mechanism by which public authorities are held to account for their spending by Parliament.

Reasons why, as regards the exemptions which are not absolute, the public interest in maintaining the exclusion outweighs the public interest in disclosing the information in these cases:

We recognise that there might be a public interest in understanding how auditors arrive at their conclusions and in particular how the NAO has exercised its functions. This needs to be balanced against the public interest in maintaining an audit process which leads to accurate and reliable reports on how public authorities are performing. Our view in response to the specific request for information under consideration here is that the likely harm to the audit process, as set out above, outweighs the public interest in releasing the audit documentation.

Section 40 of the Freedom of Information Act provides that:

1. Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
2. Any information to which a request for information relates is also exempt information if-
 - a. it constitutes personal data which do not fall within subsection (1), and
 - b. either the first or the second condition below is satisfied.
3. The first condition is-
 - a. in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - i. any of the data protection principles, or
 - ii. section 10 of that Act (right to prevent processing likely to cause damage or distress), and
 - b. in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.
4. The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

The exemption applies because:

This exemption applies because the release of personal information relating to staff at NAO or CPS would breach Data Protection Principles.

This exemption is absolute.

Section 43 of the Freedom of Information Act 2000 provides that:

- (1) Information is exempt information if it constitutes a trade secret.
- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the Commercial interests of any person (including the public authority holding it).
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

The exemption applies because:

The documents requested contain information of a commercial nature, the release of which would prejudice:

- The commercial interests of CPS by harming its ability to procure advocacy services in the Crown Court by making commercial providers aware of the techniques and information they use to procure these services;
- The ability of the Law Officers' Departments to obtain value for money when procuring advocacy services from the self-employed Bar.

Reasons why, as regards the exemptions which are not absolute, the public interest in maintaining the exclusion outweighs the public interest in disclosing the information:

While there is a public interest in understanding how CPS accounts for its use of public money we believe that this is outweighed by the public interest in protecting the commercial interests of CPS and the Law Officers' Departments to achieve best value for money when instructing counsel and therefore making the most effective use of public funds.

Statement of Policy

Our policy is to respond to requests made under the Freedom of Information Act as helpfully and promptly as possible, having regard to the principles set out in the Act. I therefore hope you are happy with the way we have handled your request of information under the Freedom of Information Act. If you are not then you should take the following steps.

In the first instance, write to Julian Wood, Director of Corporate Affairs, asking for an internal review of the way we handled your request. He will arrange such a review, which will be conducted by a senior member of staff who was not involved in decisions relating to your original request. Once the review has been completed we will write to you with the outcome.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF.