



National Audit Office

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Reference FOI-1597

Date 29 March 2023

LEGAL AID AGENCY - PAYMENTS ON ACCOUNT OF COSTS AND DISBURSEMENTS

Thank you for your request of 14 March 2023 in relation to Legal Aid Agency - Payments on Account of Costs and Disbursements under the Agency's 2018 Standard Civil Contract.

We can confirm that we hold information in scope of your request. Your specific request is set out at Annex A for your reference where we also provide our full response. While we hold some information in scope of your request, we consider it to be exempt from disclosure Section 33 (public audit functions) of the FOIA.

Annex B explains the exemption and how it applies to your request, and our consideration of the Public Interest Test in relation to s.33. I am sorry we are not able to share the information with you and I hope you find this response helpful. The Ministry of Justice (MoJ) is the owner of the information you have requested and while we will respond to information requests and associated queries, we believe MoJ are much better placed to do so. If you have any further queries in relation to this information, you may wish to contact MoJ accordingly. Annex C sets out the steps you can take if you are not satisfied with the way we have handled your request under the FOIA.

Yours sincerely,

NAO FOI Team

Annex A

Request for information about 'Legal Aid Agency - Payments on Account of Costs and Disbursements under the Agency's 2018 Standard Civil Contract.'

"Please provide me with the following information for use in a referral to the Public Accounts Committee: All reports produced by the National Audit Office concerning the management by the Legal Aid Agency of Payments on Account of profit costs and disbursements under the Agency's 2018 Standard Civil Contract in the last 5 years. Specifically, pursuant to the rules in the Contract Specification 6.19 – 6.30. The information requested includes any documents which explains how the National Audit Office have presided over the development of the situation detailed in the attached response to an FOIA Request."

NAO response

We have searched our records and can confirm that we hold information falling within the scope of your request – but consider this information exempt from disclosure. The following exemption applies: section 33.

Annex B

This annex sets out the exemption that we have applied to your request.

Section 33 Freedom of Information Act 2000 – Public Audit

Section 33 of the FOIA provides that:

- (1) This section 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).*

Reasons why we have applied the Section 33 exemption:

We have applied the Section 33 exemption to information we hold in scope of your request and which we are withholding from release, namely information related to the audit of the MoJ and the Legal Aid Agency e.g., information on provider debt, Payments on Account (POAs) and summary testing for samples of POAs and recoupments. These documents were provided to us by MOJ for the purposes of our audit and are confidential and commercially sensitive. MOJ believes releasing this information would be likely to prejudice their commercial interests and legal aid providers and would not serve the public interest.

Furthermore, we consider the release of the information would prejudice the effective performance of our public audit functions going forward and therefore the Section 33 exemption applies. Where an audited body raises reasonable concerns about the disclosure of their information, then we consider the implications for the future conduct of our public audit functions should we release it. The audit process is enhanced significantly by audited bodies or third-party entities responding promptly to information requests and/or volunteering information to support a constructive, timely and effective audit.

The disclosure by MOJ of sensitive information beyond that required for audit reporting purposes and in the face of representations against such disclosure would impair the provision of audit information in the future – it would reduce, if not cut off, critical information flows. It would incentivise MOJ and other audited bodies to take a minimalist approach to NAO information requests or, in the case of bodies whose engagement is optional, serve to discourage such information sharing altogether.

Audited bodies regularly challenge the extent of the NAO's access rights and seek to place conditions around meeting information requests. Such issues consume time and resources as we work them through. The disclosure of this sensitive information would encourage MOJ and other audited bodies to approach our audit work in this way going forwards.

An effective, efficient audit is supported through an open and constructive approach between the NAO and the audited body. As such it is critically important that we have a safe space to gather information and knowledge and can engage in a free and frank way with audited bodies. The release of this information would remove this safe space - precipitating a backdrop of increased challenge and procedure around requests for audit information. This would require the NAO to formally assert our statutory access rights more frequently and potentially seek to enforce them, leading to significant delay, escalation of issues and increased audit costs.

Section 17(3) of the Budget Responsibility and National Audit Act 2011 places a duty on the C&AG to “aim to carry out functions effectively and cost effectively”. Given the above factors, we consider that our disclosure of the information requested would be at odds with this statutory requirement – it would serve to undermine the effectiveness and increase the cost of the C&AG’s public audit functions.

For the reasons set out above, we consider it appropriate to apply the public audit exemption available under Section 33(2) of the FOIA.

Reasons why the public interest in maintaining the exclusion outweighs the public interest in disclosing the information in this case:

The NAO is independent of government and scrutinises public spending on behalf of Parliament. Our work serves the public interest by helping Parliament hold government to account, providing transparency on matters of public interest and driving improvement in the use of public resources.

We recognise that there is a public interest in knowing that the use of public money is subject to appropriate levels of accountability and transparency, delivered through an effective audit function. We consider that disclosure of sensitive audit evidence supplied to the NAO by departments and other public bodies in pursuit of our statutory functions and beyond that published in our reports would impair the audit process for the reasons set out above. Bodies and officials would be reluctant to engage with us, which would delay and diminish the audit process.

The NAO’s work puts information into the public domain and helps Parliament hold government to account. In our view, the balance of public interest rests with the NAO being able to deliver an effective and efficient public audit function and report our findings to the public.

Given the negative impact that would result from disclosure, we consider it appropriate to maintain the Section 33 public audit exemption in this instance.

Annex C

Statement of Policy

Our policy is to respond to requests made under the Freedom of Information Act 2000 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. If you are not, then you should take the following steps.

In the first instance, within 40 working days, write to the National Audit Office Freedom of Information (FOI) Team at FOI.requests@nao.org.uk or by post to:

FOI Team, Green 2, National Audit Office, 157-197 Buckingham Palace Road, London, SW1W 9SP

The Head of FOI will arrange 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 informing you of 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:

<https://ico.org.uk/> or Information Commissioner’s Office Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF