



National Audit Office

The UK's independent public spending watchdog

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Reference FOI-1623

Date 4 July 2023

MANAGING PFI ASSETS AND SERVICES AS CONTRACTS END

Thank you for your request of 6 June 2023, reproduced at Annex A.

Your request is being handled under the terms of the Freedom of Information Act 2000 (FOIA). After checking our records, I can confirm that we do hold information fitting the description you have requested.

The FOIA provides a legal right of access to recorded information held by a public authority, but it is subject to certain exemptions that may apply. While we hold information in scope of your request, having considered it, we are refusing to supply part of the details concerning the Ministry of Defence (MOD) under section 33 Public audit.

The information we are disclosing on Managing PFI Assets and services is provided in an excel spreadsheet attached to this letter's cover email. The spreadsheet contains the name of the contract and the department and Local Authority associated with the contract. Column F shows whether the asset will be transferred to the Local Authority once the contract has expired. We have provided the information to the extent that we hold it.

We have redacted the MOD information and details of the exemption, how it applies to your request, and our consideration of the Public Interest Test in relation to section 33 can be found at Annex B.

Additionally, you may wish to check the data HM Treasury and the Infrastructure and Projects Authority publish annually on Private Finance Initiative and Private Finance 2 projects: 2019-21 summary data. You can find the information [here](#) It includes the name of the contract and procuring authority. This information is due to be updated shortly.

Annex C sets out the steps you may wish to take if you are not satisfied with the way we have handled your request for information under the FOIA.

Yours sincerely,

NAO FOI Team

Annex A

Request for Managing PFI Assets and Services as Contracts End

(Your request in italics)

"I've discussed up with a colleague and we were wondering if it would be possible to also receive the breakdown by specific PFI contract (in addition to the local authority level responses provided)? So for example, where Sheffield have responded 'partially', which specific PFI contracts does this relate to?"

Annex B

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

Section 33 Freedom of Information Act 2000 – Public Audit

Section 33 of the Freedom of Information Act 2000 (FOIA) provides that:

33.-(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 certain information we hold in scope of your request and which we are withholding from release, namely PFI Assets and Services Contract details concerning MOD.

This information was provided to the NAO by MOD in confidence as its auditor. MOD believes its release would not be in the public interest as it would likely raise security concerns about sensitive defence assets. Given the views expressed to us, we believe that NAO's release of the information would be likely to prejudice the effective performance of our public audit functions going forward and that the Section 33 exemption applies.

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 NAO 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 MOD 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 MOD 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 be likely to 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