



National Audit Office

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Reference FOI-1726

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LEGAL AID AGENCY OUTCOME DOCUMENTS

Thank you for your request of 1 June 2024 for outcome documents relating to the National Audit Office's last inspection of the Legal Aid Agency. Your specific request is set out at **Annex A** for your reference.

The Freedom of Information Act (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 will not be providing you with the information in accordance with sections 21 (information accessible to the applicant by other means) and 33 (public audit functions) of FOIA. An explanation of these exemptions and how they apply to your request can be found in **Annex B**.

I am sorry that we are not able to share the information with you. **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,

FOI and Correspondence Officer



Annex A

Request for information about the NAO's last inspection of the Legal Aid Agency:

"Please provide me with the outcome documents relating to the National Audit Office's last inspection of the Legal Aid Agency - specifically those documents relating to the Agency's management of the Payments on Account it makes, and has made to Civil Legal Aid Providers under Rules 6.19 - 6.30 of its Standard Civil Contract Specification."

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 exemptions apply: section 21 and section 33.

Annex B

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

Section 21 Freedom of Information Act 2000 – Information accessible to applicant by other means.

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1) –

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

Reasons why we have applied the Section 21 exemption:

Under Section 21 of the FOIA we are not obliged to provide information that is reasonably accessible to you and some of the information you requested is in the public domain.

The Comptroller and Auditor General's opinion on the financial statements of the Legal Aid Agency (LAA) for the year ended 31 March 2023 is publicly available within the [Annual Report and Accounts 2022-23](#).

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 in the NAO's Management Letter and Audit Completion Report in relation to our audit of the LAA's 2022-23 financial statements. This information was created from, and in response to, information shared with the NAO for audit purposes.

It is the LAA's view that disclosure of information relating to its management of the Payments on Account process under Rules 6.19 - 6.30 of its Standard Civil Contract Specification would be likely to prejudice the Ministry of Justice's ability to competitively tender and secure value for money under future legal aid contracts. Therefore, 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.

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 information about the LAA's management of Payments on Account 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 the LAA in pursuit of our statutory functions and beyond that published in our reports would impair the audit process for the reasons set out above.

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@nao.org.uk or by post to:

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

The FOI & Correspondence Manager 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 primary way of escalating your concerns to the Information Commissioner is at: <https://ico.org.uk/foicomplaints>

Alternatively, you can contact the ICO at <https://ico.org.uk/> or Information Commissioner's Office Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF.