

One Kemble Street

London

WC2B 4TS

T: 020 7210 1189

F: 020 7210 1186

<http://www.justiceinspectorates.gov.uk/hmcpsi/>

5 June 2018

1. Thank you for your freedom of information (FOI) request received by email on 8 May 2018.
2. In your request received 8 May 2018 you asked for an unredacted copy of the document referred to in the article published in The Times on 3 April 2018.
3. I am assuming you mean an unredacted copy of the information provided to the Centre for Criminal Appeals, in response to their FOI request regarding our report on the disclosure of unused evidence.
4. I can confirm that we hold information that is in scope.
5. We are withholding this information under Section 22 of the Freedom of Information Act.
6. Section 22 applies when the material requested is definitely intended for publication.
7. Section 22 is a ‘qualified exemption’ and requires us to carry out a public interest test to consider whether the balance of interest lies in releasing or withholding the information. In considering this, we have paid particular regard to the arguments in favour of disclosure, including that disclosure may be of benefit because it:
   * + furthers public understanding of the inspection process;
     + promotes accountability and transparency in relation to decision making.
8. While acknowledging these benefits we consider that on this occasion the arguments for upholding the exemption outweigh those in favour of disclosure as the information will be published in due course on the HMCPSI website, so there would be a disproportionate cost to the organisation with little benefit to the public interest.
9. Although the information will be published, it is redacted as we consider it to be exempt from disclosure under sections 40(2), 33(2) and 31(c) of the Freedom of Information Act.
10. Section 40(2) applies to personal data when disclosure would breach any of the Data Protection Principles. We consider that disclosure of names or any personal data that could identify individuals would be against the individuals’ legitimate expectations of how their information would be processed by the authority and therefore likely to breach the first principle.
11. Section 33(2) applies where 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). HM Crown Prosecution Service Inspectorate’s function falls within section 33(1).
12. Section 33 is a ‘qualified exemption’ and requires us to carry out a public interest test to consider whether the balance of interest lies in releasing or withholding the information. In considering this, we have paid particular regard to the arguments in favour of disclosure, including that disclosure may be of benefit because it:
    * + furthers public understanding of the inspection process;
      + promotes accountability and transparency in relation to decision making.
13. While acknowledging these benefits we consider that on this occasion the arguments for upholding the exemption and withholding the redacted information outweigh those in favour of disclosure. In particular, consideration of the following factors has led us to the conclusion that the public interest requires the exemption in section 33 to be upheld because it:
    * + ensures that inspectors can effectively carry out their duties; although inspectors can compel information from the body it inspects, for a fully informed view it also relies on information voluntarily given by lawyers/staff at the coal face. They make such comments on the understanding that they cannot be traced back to them. Whilst we use the material in the report we do not provide any information that would tend to identify them or make them feel at risk of identification. The same argument applies to police officers when we conduct joint inspections with HMICFRS as was the case in the report on disclosure.
14. Section 31(c) applies where disclosure would prejudice the administration of justice.
15. Section 31 is a ‘qualified exemption’ and requires us to carry out a public interest test to consider whether the balance of interest lies in releasing or withholding the information. In considering this, we have paid particular regard to the arguments in favour of disclosure, including that disclosure may be of benefit because it:
    * + furthers public understanding of the inspection process;
      + promotes accountability and transparency in relation to decision making.
16. While acknowledging these benefits we consider that on this occasion the arguments for upholding the exemption and withholding the redacted information outweigh those in favour of disclosure. In particular consideration of the following factors has led us to the conclusion that the public interest requires the exemption in section 31 to be upheld because:
    * + for any inspection to be properly informed we rely on judges and lawyers involved in the trial process to be open and frank about their experiences as part of the audit process. Publication of such comments in a way that can identify a particular judge with a particular case would be likely to prejudice the administration of justice.
17. Full details of the FOI request by the Centre for Criminal Appeals and our response to the request will be published.

**Complaints and comments**

1. I would like to explain that if you are dissatisfied with any aspect of our response to your request for information please send full details within two calendar months of the date of this email to: [info@hmcpsi.gov.uk](mailto:info@hmcpsi.gov.uk) marked for the attention of.
2. You have the right to ask the Information Commissioner (ICO) to investigate any aspect of your complaint. Please note that the ICO is likely to expect internal complaints procedures to have been exhausted before beginning an investigation.