



HM Crown Prosecution
Service Inspectorate

One Kemble Street
London
WC2B 4TS

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

16 March 2018

Dear [REDACTED]

1. Thank you for your freedom of information requests received on 12 February and 12 March 2018. We have explained in previous correspondence why we have needed more time to consider your requests received on 12 February and how this request was not received by us until you forwarded it on 12 February despite you sending it on 18 January.
2. In your request received 12 February you asked for information in respect of HMCPSI's joint report with HM Inspectorate of Constabulary, Making it fair: The disclosure of unused material in volume Crown Court cases (18 July 2017) (henceforth 'the report').
3. The information requested is as follows:
 1. Available transcripts or notes from the "police focus groups" referred to at paragraph 4.6 of the report, with any personal data (such as names of the participants) redacted;
 2. Available transcripts or notes from the "prosecution focus groups" referred to at paragraph 5.2 of the report, with any personal data (such as names of the participants) redacted;
 3. Available transcripts or notes of the conversations with judges referred to at paragraphs 7.1 and 7.2 of the report, with any personal data (such as names of the judges) redacted;
 4. Copies of all survey responses of the kind referred to at paragraph 8.5 of the report, with any personal data (such as the names of respondents) redacted;

5. The names of the police forces who reported "that they have previously engaged experts who have provided training which was subsequently shown to be wrong" (paragraph 10.4) and the text of these reports;

6. Of the "eight cases in both our case file samples which had unresolved disclosure issues relating to witness credibility" (paragraph 5.8), what steps, if any, have been taken to notify the convicted defendants in these cases or their representatives of this?

7. Regarding each of the six case studies outlined in the report (on pages 13, 15, 16, 18 and 22), what action, if any, has been taken in relation to the individual police officers or prosecutors found to be at fault?

8. Copies of earlier drafts of the report including any tracked changes and comments.

4. Taking the first 2 requests:

1. Available transcripts or notes from the "police focus groups" referred to at paragraph 4.6 of the report, with any personal data (such as names of the participants) redacted.
2. Available transcripts or notes from the "prosecution focus groups" referred to at paragraph 5.2 of the report, with any personal data (such as names of the participants) redacted;

5. I can confirm that the organisation holds information within scope of your requests 1 and 2.

6. This information is attached however we have redacted some of the information as we consider it to be exempt from disclosure under sections 40(2), 41(1) and 33 (2) of the Freedom of Information Act.

7. 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.

8. Section 41(1) applies where disclosure of the information would constitute a breach of confidence actionable by that or any other person. Although the information given in focus groups is used to inform the final report, participants are told that their contributions will not be attributed to them personally or the area/unit/ force within which they operate.

9. 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).

10. 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:

- furthering public understanding of the inspection process;
- promoting accountability and transparency in relation to decision making;

11. However, 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:

- ensuring 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 here.

12. Turning to your third request:

3. *Available transcripts or notes of the conversations with judges referred to at paragraphs 7.1 and 7.2 of the report, with any personal data (such as names of the judges) redacted;*

13. I can confirm that the organisation holds information within scope of this request.

14. This information is attached however, we have redacted some of the information as we consider it to be exempt from disclosure under sections 40(2), 41(1), 31(c) and 33(2) of the Freedom of Information Act.

15. 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.
16. Section 41(1) applies where would constitute a breach of confidence actionable by that or any other person. Although the information given by the judiciary is used to inform the final report, they are given assurances that their contributions will not attributed to them personally or their court centre/ area.
17. Section 31(c) applies where disclosure would prejudice the administration of justice. In this case we have redacted details of cases they had been involved in referred to by the judges.
18. S31 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:
 - furthering public understanding of the inspection process;
 - promoting accountability and transparency in relation to decision making;
19. However, 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
20. 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).

21. 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:

- furthering public understanding of the inspection process;
- promoting accountability and transparency in relation to decision making;

22. However, 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:

- ensuring 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 judges. 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.

23. Moving to your 4th request:

4. *Copies of all survey responses of the kind referred to at paragraph 8.5 of the report, with any personal data (such as the names of respondents) redacted;*

24. I can confirm that we hold information that is in scope.

25. This information is attached and has been redacted in line with exemptions 40(2) and 33(2).

26. As detailed above Section 40(2) allows for the redaction of data disclosure of names or any personal data that could identify individuals or 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.

27. 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).

28. 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:

- furthering public understanding of the inspection process;
- promoting accountability and transparency in relation to decision making;

29. However, 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:

- ensuring 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 here.

30. Your 5th request asks:

5. *The names of the police forces who reported "that they have previously engaged experts who have provided training which was subsequently shown to be wrong" (paragraph 10.4) and the text of these reports;*

31. I can confirm that we do hold information in scope.

32. We are withholding this information under Section 33(2) of the Freedom of Information Act.

33. 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).

34. 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:

- furthering public understanding of the inspection process;
- promoting accountability and transparency in relation to decision making;
- furthering public understanding in decisions made by public bodies.

35. However, 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:

- ensuring 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 do 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 here.

36. Taking your 6th and 7th requests together:

6. Of the "eight cases in both our case file samples which had unresolved disclosure issues relating to witness credibility" (paragraph 5.8), what steps, if any, have been taken to notify the convicted defendants in these cases or their representatives of this?

7. Regarding each of the six case studies outlined in the report (on pages 13, 15, 16, 18 and 22), what action, if any, has been taken in relation to the individual police officers or prosecutors found to be at fault?

37. We do not hold any information in scope of these requests.

38. By way of background we are inspectors and not regulators. If as part of our inspection process we identify any potential issues with specific cases or individuals we will bring these to the attention of senior managers within the inspected organisations however we have no remit to deal with these issues.

39. Your 8th request asked:

8. *Copies of earlier drafts of the report including any tracked changes and comments.*

40. I can confirm that we do hold material in scope of this request. However, we still need a little more time to consider the public interest balance for releasing these reports. We need to consider this for each draft and this is taking longer than we had anticipated. We aim to respond on this part of your request by Friday 23 March but will endeavour to do so before then.


41. In your request received 12 March, you asked:

I would be grateful if you could please provide blank copies of any agreements signed by the focus group participants, judges and survey respondents referred to in items 1-4 of my request.

42. We do not hold any information in scope of these requests.

43. By way of background we do not use signed confidentiality agreements. All assurances of confidentiality are given verbally and form the basis of the conditions under which we gather our evidence.

Complaints and comments

44. I would like to explain that if you are dissatisfied with any aspect of our response to your request for information and/or wish to appeal against information being withheld from you please send full details within two calendar months of the date of this email to 

45. 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.

Yours sincerely

