

COURT ORDERS

METROPOLITAN POLICE GUIDANCE FOR THE ACCOUNTING SECTOR

What are Production and Disclosure Orders?

A Production Order is a legal order signed by a Crown Court Judge which requires the person or organisation named in the order to produce the material described in relation to the subject(s) named in the order. A Disclosure Order is a legal order signed by a Crown Court Judge which authorises an officer to serve a notice on anyone who has information relevant to an investigation. Any person served with such a notice is required to produce the material and/or information which is specified in the notice that they hold in relation to the subject(s) named in the notice.

What is the purpose of these orders?

Production and Disclosure orders are a lawful means to obtain information you hold which is needed for a criminal investigation into money laundering offences or an investigation pursuant to Part 5 of the Proceeds of Crime Act 2002. If an order is served on you or your firm it does not necessarily follow that you are a suspect in the investigation. If the police do not have a court order you can decline to provide material and ask them to obtain one.

For example, your firm may receive an order for information you hold about a client for whom you prepare annual accounts. Where your firm has calculated the numbers reported in this client's accounts your working papers may be needed to identify how particular transactions were reported.

Who are these court orders served on?

The orders are served on people or organisations believed to hold information relevant to a criminal investigation into money laundering offences or an investigation pursuant to Part 5 of the Proceeds of Crime Act 2002 (civil proceedings in relation to the forfeiture of cash). Such orders are routinely served on banks, solicitors and accountants.

How is a Production or Disclosure Order obtained?

A police officer or accredited Financial Investigator (AFI) may apply to a Crown Court for the order and must explain why they need the material. The application may be made in court by an officer attending in person, or administratively where a Judge reviews the application and grants an order without a hearing.

The officers should make you aware of when and where he or she will apply for such an order. You may, should you wish, attend the court hearing (or instruct Counsel on your behalf) and may even object to the application – or any part of it. This is called an inter partes hearing.

In some circumstances where the nature of the investigation is sensitive the officer may make an application to the court without giving you prior notice. This is called an ex parte application.

What happens if I receive a phone-call from the police asking for material?

Prior to applying for an order, an officer should take reasonable steps to contact you and confirm you hold the material sought. This initial contact is called a 'pre-order enquiry'.

If you receive a phone-call or email from an investigator asking if you hold information in relation to a particular person or company what they are seeking to establish is if you hold material and if so the

nature of that material so that they can ensure that the order is worded appropriately and restricted to what is relevant and available.

You do not have to assist in a 'pre-order enquiry'. However it may be advantageous to confirm if you hold the material sought. Bear in mind when asked whether you hold material for a particular business that this includes your own working papers, reports, correspondence and data held on accounting software. In particular, it includes material held digitally.

Can I tell my client about a Court Order which concerns them?

Once you have been made aware of an investigation, you may commit a criminal offence if you disclose to someone that they are under investigation for Money Laundering offences or an investigation pursuant to Part 5 of the Proceeds of Crime Act 2002. Therefore, once you receive a 'pre-order enquiry' or a court order you may not make any reference of this to your client.

What about Confidentiality and Legal Privilege?

Court Orders override your professional duty of client confidentiality. Legal Privilege does not apply to accounting documents. It only applies to correspondence between lawyers and their clients where they are providing legal advice, and communications made in connection with or in contemplation of legal proceedings.

What happens if I refuse to hand over the material?

You are compelled to provide the material within the time frame specified. If you don't comply with the order you may be in contempt of court. This would be punishable with a fine or two years' imprisonment or both.

The court may set whatever timescale they deem appropriate for full compliance. In exceptional circumstances the order may compel the recipient to comply 'here and now'. If an applicant makes a 'pre-order enquiry' it may be in your interest to engage with them as it is an opportunity to discuss how long you require to comply on receipt of the order.

If you fail to engage and an order is made then you must comply within the timescale set out, regardless of how arduous the order appears.

What issues have police officers had when engaging with accountants?

In the past we've encountered issues including accountants withholding information, being selective in what they provide, questioning why it is required, refusing to engage, and refusing to provide information based on misunderstandings of legal privilege and client confidentiality. Some of these issues arose because neither the individual nor their firm has received an order before and didn't understand what their legal obligations were or what they needed to do.

Engagement at the 'pre-order' stage can alleviate these issues. Likewise, engagement on receipt of the order can be advantageous. The officer believes that you hold certain evidence of value to their investigation. It is beneficial to them to engage with you to obtain that evidence.

Conversely it is as inconvenient to you as it is to them to make multiple visits to collect information which was not initially provided or to have the matter listed for a further court hearing for 'non-compliance'. In such cases you would have to attend court and explain why the order was not complied with.

If you receive an order, consider early engagement with the applicant as they may be able to answer your questions and alleviate your concerns. For further advice and information we would recommend contacting your professional body or seeking independent legal advice.