



PRODUCTION AND DISCLOSURE ORDERS

This helpsheet is based on Guidance from the Metropolitan police for the accounting sector. It explains what a Production or Disclosure Order is, what you should do if you receive one and the purpose of a pre-order enquiry.

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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 for law enforcement to obtain information you hold which is needed for a criminal investigation into money laundering offences or an investigation relating to Part 5 of the Proceeds of Crime Act 2002 (civil proceedings in relation to the forfeiture of cash).

If an order is served on you or your firm, it does not necessarily follow that you are a suspect in the investigation but that there are concerns about one of your clients. Law enforcement believe that you hold information that will help them understand what has happened. For example, your firm may receive an order for information you hold about a client for whom you prepare annual accounts. They may wish to view your working papers to identify how particular transactions were reported.

If the police do not have a court order you can decline to provide material and ask them to obtain one.

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 and solicitors and increasingly on accountants. However, you may rarely see one, so it is important to know what to do when you do.

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-parties 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'. You may receive a phone-call or email from an investigator asking if you hold information in relation to a person or company. They are seeking to establish whether you hold the material/information and the nature of that material. They can then ensure that the order is worded appropriately and restricted to what is relevant and available.

It is reasonable to consider whether you need to check the validity of the caller. Ask for details of how to return the call and check the numbers before you call.

You do not have to assist in a 'pre-order enquiry'. However, it may be advantageous to confirm if you hold the material sought.

The material that they are looking to source may include your own working papers, reports, correspondence and data held on accounting software. 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 must not make any reference of this to your client. You should also re-consider the risk score for the client, in light of the obvious connection to an ongoing criminal investigation.

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. If you feel the task is particularly time consuming and you feel this may not have been taken into account by the court, contact the office and discuss your concerns.

Where can I get advice?

If you receive an order, consider early engagement with the individual that has sent you the order as they may be able to answer your questions and alleviate your concerns.

For further advice and information please contact ICAEW MLCO@icaew.com