



**An Coimisinéir Faisnéise
Information Commissioner**

**Review Application to the Information Commissioner under the
Freedom of Information Act 2014 (the FOI Act)**

Case Number: OIC-58612-G9F7Z0

Applicant: Mr Maurice Landers

Public Body: National Treasury Management Agency (NTMA)

Issue: Whether the NTMA was justified in refusing access to internal audit plans for the National Pensions Reserve Fund for the years ending 31 December 2009, 2010 and 2011, under Section 15(1)(a) on the basis that the records do not exist.

Review: Conducted in accordance with section 22(2) of the FOI Act by Stephen Rafferty, Senior Investigator, who is authorised by the Information Commissioner to conduct this review

Decision: The Senior Investigator affirmed the NTMA's decision.

Right of Appeal: Section 24 of the FOI Act sets out detailed provisions for an appeal to the High Court by a party to a review, or any other person affected by the decision. In summary, such an appeal, normally on a point of law, must be initiated not later than four weeks after notice of the decision was given to the person bringing the appeal.

Background

On 5 June 2019, the applicant submitted a request to the NTMA for copies of the internal audit plans for the National Pensions Reserve Fund (NPRF) for financial years ending 31 December 2009, 2010 and 2011 as per NTMA's engagement with PwC. Following correspondence between the parties, it was subsequently agreed to process the applicant's request under FOI.

In a decision dated 24 September 2019, the NTMA stated that it had conducted searches and located three audit plan presentations dated 2009, 2010, and 2011, copies of which were released. The applicant sought an internal review of the NTMA's decision on the ground that he wanted access to the audit plans. On 6 November 2019, the applicant sought a review by this Office of the deemed refusal of his request. On 8 November 2019, the NTMA issued its internal review decision in which it refused the request on the basis that the requested internal audit plans did not exist and that the records of most relevance to the request had been released to the applicant in full.

I have now completed my review in accordance with section 22(2) of the FOI Act. During the course of the review, this Office provided the applicant with details of NTMA's submissions regarding the searches it had conducted in response to his request. Ms Greenalgh of this Office informed the applicant of her view that NTMA had carried out all reasonable steps in an effort to ascertain the whereabouts of the records sought and that it was justified in refusing the request on the ground that the records sought did not exist. She invited the applicant to make a further submission on the matter. In response, the applicant said he did not wish to withdraw his application for review.

I have decided to conclude this review by way of a formal, binding decision. In conducting the review, I have had regard to the correspondence between the applicant and NTMA and to the communications between this Office and both NTMA and the applicant on the matter.

Scope of Review

This review is concerned solely with the question of whether the NTMA was justified in refusing access to the internal audit plans for the NPRF for the years ending 31 December 2009, 2010 and 2011.

Analysis and Findings

Section 15(1)(a) of the FOI Act provides that access to records may be refused if the records concerned do not exist or cannot be found after all reasonable steps to ascertain their whereabouts have been taken. The role of the Commissioner in a case involving section 15(1)(a) is to decide whether the decision maker has had regard to all of the relevant evidence and, if so, whether the decision maker was justified in coming to the decision that the records do not exist or cannot be found, after all reasonable steps to ascertain their whereabouts have been taken. The evidence in such cases includes the steps actually taken to search for records. It also comprises miscellaneous other evidence about the record management practices of the FOI Body, on the

basis of which the decision maker concluded that the steps taken to search for records were reasonable.

In submissions to this Office, the NTMA provided details of searches conducted to identify and locate any records entitled or comprising the final agreed 'internal audit plans'. As this Office has already provided the applicant with those details, I do not propose to repeat them in full here.

In summary, the NTMA said that on foot of the request, the staff member who performed the role of NPRF Commission Secretary was asked to search for relevant records and no relevant internal audit plans were located. It said it understands that PwC did not submit final or formal audit plans once an audit plan was agreed at Audit Committee level. It said further searches were conducted at internal review stage. Staff members considered most likely to have had involvement in the NPRF internal audit process were requested to undertake manual and electronic searches (using key words) for any relevant records. These searches did not identify any additional records entitled or comprising internal audit plans for the NPRF for the years in question.

It is the NTMA's position that based on the searches it carried out, the knowledge of the former NPRF Commission Secretary, relevant staff members and the content of the applicable Audit Committee minutes, that no PwC internal audit plans exist for the years in question. The only records located relating to the scope of the internal audit work carried out by PwC have already been provided to the applicant.

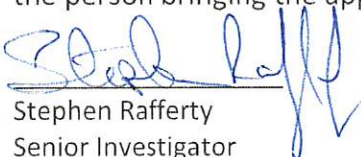
Having considered the NTMA's description of the searches undertaken and of the consultations that took place with members of staff, I am satisfied that it has carried out all reasonable steps in an effort to locate the audit plans sought by the applicant. I find, therefore, that the NTMA was justified in refusing access to the records sought on the grounds that the records cannot be found or do not exist.

Decision

Having carried out a review under section 22(2) of the FOI Act, I hereby affirm the decision of the NTMA to refuse access to the internal audit plans for the National Pensions Reserve Fund for the years ending 31 December 2009, 2010 and 2011 on the grounds that the records sought do not exist.

Right of Appeal

Section 24 of the FOI Act sets out detailed provisions for an Appeal to the High Court by a party to a review, or any other person affected by the decision. In summary, such an appeal, normally on a point of law, must be initiated not later than four weeks after notice of the decision was given to the person bringing the appeal.



Stephen Rafferty
Senior Investigator
24 January 2020