

Decision Notice

Decision 19/2019: Department of Internal Audit

Internal Audit report

Reference no: 20190402

Decision date: 19 July 2019

Summary

The Applicant made a request to the Ministry of Legal Affairs Headquarters (**Ministry**) for three items, including the report into allegations of misconduct against the Director of Child and Family Services (**Report**). The Ministry transferred the request for the report to the Department of Internal Audit (**Internal Audit**). Internal Audit decided that the report fell outside the scope of the Public Access to Information (**PATI**) Act 2010 in accordance with section 4(1)(b)(vii), because it was created by Internal Audit in the course of carrying out its functions.

The Information Commissioner has found that Internal Audit correctly determined that the PATI Act did not apply to the record in accordance with section 4(1)(b)(vii) of the Act. The Information Commissioner has affirmed Internal Audit's decision.

Relevant Statutory provisions

Public Access to Information (**PATI**) Act 2010: section 4 (application).

Internal Audit Act 2010: section 4 (functions of department); section 11 (suspected cases of irregularity or fraud).

The full text of each statutory provision cited above is reproduced in Appendix 1 to this Decision. The Appendix forms part of this Decision.

Background

1. On 30 January 2019, the Applicant made a public access to information (**PATI**) request to the Ministry of Legal Affairs (**Ministry**), which included a request for the “full report into allegations of misconduct against [the Director of the Department of Child and Family Services], which was conducted by the Ministry and the Department of Internal Audit” (**Report**).
2. On 27 February 2019, the Ministry transferred this part of the Applicant's PATI request to the Department of Internal Audit (**Internal Audit**).
3. On 1 March 2019, the Applicant received Internal Audit's response. Internal Audit refused access to the record stating that all audit and compliance reports produced by Internal Audit are exempted from disclosure under the PATI Act.

4. On 7 March 2019, the Applicant requested an internal review.
5. On 27 March 2019, Internal Audit issued an internal review decision. The internal review decision upheld Internal Audit's initial decision, stating that section 4(1)(b)(vii) of the PATI Act dictates that the Act does not apply to records obtained or created by Internal Audit in the course of carrying out its functions except where those records relate to the general administration of Internal Audit.
6. The head of the authority stated that the requested record was non-administrative and therefore there is no public right of access to the record under Part 3 of the PATI Act.
7. The Applicant submitted a timely application on 2 April 2019 seeking an independent review by the Information Commissioner.

Investigation

8. The application was accepted as valid. The Information Commissioner confirmed that the Applicant made a PATI request to a public authority and asked the public authority for an internal review before asking her for an independent review. Additionally, the Information Commissioner confirmed the issues the Applicant wanted her to review.
9. The Information Commissioner decided that early resolution under section 46 of the PATI Act was not appropriate. This was because submissions were required from Internal Audit to determine whether its reliance on section 4(1)(b)(vii) was correct.
10. On 17 April 2019, the ICO notified Internal Audit of the valid application.
11. Section 47(4) of the PATI Act requires the Information Commissioner to give all parties to the review an opportunity to make representations. Internal Audit and the Applicant were invited to comment on this application and make submissions to the Information Commissioner for consideration during this review. Internal Audit was asked specific questions concerning its reliance on section 4(1)(b)(vii) of the PATI Act. The Information Commissioner also reviewed the record that was responsive to the request.
12. Both Internal Audit and the Applicant provided submissions.

Information Commissioner's analysis and findings

13. In coming to a decision on this matter, the Information Commissioner considered all of the relevant submissions, or parts of submissions, made by the Applicant and Internal Audit. She is satisfied that no matter of relevance has been overlooked.

Applicability of the PATI Act – section 4(1)(b)(vii)

14. As the Information Commissioner set out in [Decision 02/2019, Office of the Governor](#), section 4 of the PATI Act defines the scope of the records to which the PATI Act applies. Section 4(1)(b) states that the PATI Act does not apply to “records obtained or created by any of the following public authorities in the course of carrying out their functions” and lists the named authorities, including Internal Audit listed in section 4(1)(b)(vii).

15. Section 4(2) explains that 4(1) “does not include records relating to the general administration” of these authorities.

16. The framework of section 4 brings every public authority within the requirements of the PATI Act to ensure public accountability, and then removes certain records from the Act's application related to the functions of these specific public authorities.

17. Section 4 of the PATI Act also makes a distinction between those functions and duties that are specific to the mandate of a particular public authority, and the general administrative duties that many public authorities share.

18. The PATI Act and Regulations do not define ‘functions’ or ‘general administration’. Section 7 of the Interpretation Act 1951, however, defines ‘function’ as “the powers conferred, or duties imposed, on the authority or officer by or under any provisions of law”.

19. The Information Commissioner has adopted the definition of ‘general administration’ to include “records which have to do with the management of [a public authority] such as records relating to personnel, pay matters, recruitment, accounts, information technology, accommodation, internal organization, office procedures and the like”¹.

20. In sum, for section 4(1)(b)(vii) of the PATI Act to apply, the following must be considered:

[1] Was the record obtained or created by Internal Audit?

¹ See [Decision 02/2019, Office of the Governor](#), paragraph 20, available at https://docs.wixstatic.com/ugd/5803dc_335b333ae0824201bc435fb9d281d019.pdf.

[2] Was it obtained or created in the course of Internal Audit carrying out its functions?

[3] Does the record relate to the general administration of Internal Audit?

Public authority's submissions

21. Internal Audit submitted that the Report was created by Internal Audit in the course of carrying out its functions in accordance with the Internal Audit Act 2010, and did not relate to the general administration of Internal Audit.
22. Internal Audit explained that in August 2018 the Director of Internal Audit received a letter from the former Permanent Secretary of the Ministry of Social Development and Sport² outlining allegations made against the Director of the Department of Child and Family Services. In September 2018, Internal Audit and the former Permanent Secretary agreed to a Special Terms of Reference for Internal Audit's investigation.
23. Internal Audit stated that the matter was referred to it under section 11(1) of the Internal Audit Act 2010. The audit was conducted pursuant to the Special Terms of Reference and in accordance with the 2017 International Standards for the Professional Practice of Internal Auditing.
24. Internal Audit submitted that the Report was completed on 14 December 2018. It issued the Report to the Permanent Secretary for the Ministry of Legal Affairs, who had assumed responsibility for the Department of Child and Family Services³, as well as to the Head of the Public Service and the Secretary to the Cabinet.
25. Internal Audit also explained that a separate operational report on the Department of Child and Family Services was issued on 14 January 2019. This operational report was a follow up to an Internal Audit report on the Department of Child and Family Services issued on 25 August 2015.
26. Internal Audit also confirmed that it does not hold any report or any other documentation regarding any separate investigation produced by the Permanent Secretary responsible for the Department of Child and Family Services or produced by any other public authority

² At that time, the Department of Child and Family Services fell under the responsibility of the Ministry of Social Development and Sport. The Department of Child and Family Services now falls under the responsibility of the Ministry of Legal Affairs.

³ Internal Audit explained that ordinarily the Report would have been sent to the Director of the Department of Child and Family Services, as the Department of Child and Family Services was the auditee; however, given that the Director was the subject of the Report, it was sent to the Permanent Secretary for the Ministry of Legal Affairs.

regarding the allegations made against the Director of the Department of Child and Family Services.

Applicant's submissions

27. The Applicant did not make submissions on the application of section 4(1)(b)(vii).
28. In their submissions, the Applicant sought clarification on the specific record or records at issue in this review.

Discussion

[1] *Was the record obtained or created by Internal Audit?*

29. The single record at issue in this review is the Report that Internal Audit issued on 14 December 2018 concerning allegations made against the Director of the Department of Child and Family Services. The Information Commissioner reviewed the Report and confirmed that it was created by Internal Audit.

[2] *Was it obtained or created in the course of Internal Audit carrying out its functions?*

30. The governing legislation of Internal Audit is the Internal Audit Act 2010. Pursuant to section 4(4) of the Internal Audit Act, "The Department shall oversee all the internal audit activities of an auditee and the auditee shall not, without the prior written approval of the Director, engage any other person or entity to conduct an internal audit of the auditee".
31. An auditee is defined as a "Government Department or other public authority referred to in section 4 of the Public Treasury (Administration and Payments) Act 1969". The Information Commissioner accepts that the Department of Child and Family Services is a 'Government Department' within the meaning of the Internal Audit Act.
32. Section 4 of the Internal Audit Act sets out a broad mandate for Internal Audit:

- (1) The Department shall establish standards and procedures for the conduct of internal audit activities to provide an independent, objective assessment of the stewardship and performance of Government policies, programmes and operations.
- (2) The Department shall determine whether an auditee's risk management, control and governance processes ... are

adequate and functioning in a manner which provides reasonable assurance that—

- (a) public funds are adequately safeguarded and are used as intended;
- (b) public funds are used economically, effectively and efficiently;
- (c) risks are appropriately identified and managed;
- (d) financial, managerial and operating information is accurate, reliable and timely;
- (e) the auditee's actions are in compliance with policies, standards, procedures and the law; and
- (f) plans, goals and objectives of the auditee are capable of being achieved.

33. Section 11(1) of the Internal Audit Act further states that "If an auditee has reason to suspect an irregularity or fraud of public funds, it shall refer the matter forthwith to the Director...". 'Irregularity' is defined in section 2 of the Internal Audit Act as "an act or omission which unlawfully diminishes public funds or which is not consonant with the proper management of public funds".

34. Having reviewed the Report and the submissions by Internal Audit, the Information Commissioner accepts that the subject matter of the Report was referred to the Director of Internal Audit pursuant to section 11 of the Internal Audit Act. The Director of Internal Audit conducted an internal audit and issued the Report in accordance with that referral.

35. The Information Commissioner is satisfied that the Report was created by Internal Audit in the course of carrying out its functions under sections 4 and 11 of the Internal Audit Act.

[3] *Does the record relate to the general administration of Internal Audit?*

36. The Report requested by the Applicant was the result of an audit conducted by Internal Audit in accordance with its functions under sections 4 and 11 of the Internal Audit Act. It is not related to the management of Internal Audit such as personnel, pay matters, recruitment, internal organization, etc. The Information Commissioner is satisfied that the Report does not relate to the general administration of Internal Audit.

Conclusion

37. The Information Commissioner is satisfied that the Report falls within section 4(1)(b)(vii) of the PATI Act and that the PATI Act is not applicable to the record requested by the Applicant. No right of access under section 12 of the PATI Act applies.

Decision

The Information Commissioner finds that the Department of Internal Audit (**Internal Audit**) correctly decided that the Public Access to Information (**PATI**) Act 2010 does not apply to the record sought by the Applicant, in accordance with section 4(1)(b)(vii) of the PATI Act. The Information Commissioner affirms the decision by Internal Audit.

Judicial Review

The Applicant, the Department of Internal Audit, or any person aggrieved by this Decision have the right to seek and apply for judicial review to the Supreme Court according to section 49 of the PATI Act. Any such application must be made within six months of this Decision.



Gitanjali S. Gutierrez
Information Commissioner
19 July 2019

Appendix: Relevant statutory provisions

Public Access to Information Act 2010

Section 4 – Application

- (1) Subject to subsection (2), this Act does not apply to—
- ...
 - (b) records obtained or created by any of the following public authorities in the course of carrying out their functions—
 - ...
 - (vii) the Department of Internal Audit.
- (2) The reference to records in subsection (1) does not include records relating to the general administration of—
- ...
 - (b) any public authority referred to in subsection (1)(b).

Internal Audit Act 2010

Section 4 – Functions of Department

- (1) The Department shall establish standards and procedures for the conduct of internal audit activities to provide an independent, objective assessment of the stewardship and performance of Government policies, programmes and operations.
- (2) The Department shall determine whether an auditee's risk management, control and governance processes (as designed and represented by the auditee) are adequate and functioning in a manner which provides reasonable assurance that—
- (a) public funds are adequately safeguarded and are used as intended;
 - (b) public funds are used economically, effectively and efficiently;
 - (c) risks are appropriately identified and managed;
 - (d) financial, managerial and operating information is accurate, reliable and timely;
 - (e) the auditee's actions are in compliance with policies, standards, procedures and the law; and
 - (f) plans, goals and objectives of the auditee are capable of being achieved.
- (3) Without limiting subsections (1) and (2), the Department shall—
- (a) promote economy, efficiency and effectiveness in the administration of Government programmes and operations;
 - (b) prepare plans to be approved by the Committee for the development and maintenance of an efficient internal audit for the auditees;

- (c) design plans to provide reasonable assurance that accounts are free of material misstatement, whether caused by error or fraud; and
 - (d) provide a means for keeping the auditees fully and currently informed about problems and deficiencies identified in relation to the administration of their programmes and operations and the necessity for appropriate corrective action.
- (4) The Department shall oversee all the internal audit activities of an auditee and the auditee shall not, without the prior written approval of the Director, engage any other person or entity to conduct an internal audit of the auditee.

Section 11 – Suspected cases of irregularity or fraud

- (1) If an auditee has reason to suspect an irregularity or fraud of public funds, it shall refer the matter forthwith to the Director, and shall supply to the Director all information in its possession relating to the suspected irregularity or fraud.
- (2) If the Director establishes the existence of a suspected case of irregularity or fraud in the auditee under review, the Director shall immediately inform—
 - (a) the Permanent Secretary of the auditee and the Auditor General; or
 - (b) the Head of the Civil Service and the Auditor General, if the Director believes that it is more appropriate to do so.