

**Australian Prudential Regulation Authority**

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Ref no: 15/001192

10 April 2015

Mr Philip Sweeney

Email via: [foi+request-1017-b5f25758@righttoknow.org.au](mailto:foi+request-1017-b5f25758@righttoknow.org.au)

Dear Mr Philip Sweeney,

**FOI Application dated 13 March 2015**

I refer to your request dated 13 March 2015 (FOI request), which was received by APRA on 13 March 2015, in which you sought access under the *Freedom of Information Act 1982* to the following documents:

*'The document I seek is a copy of an Act of the Parliament of South Australia that would add Regulation 52A to the wind-up Regulation 52 , to allow the Transfer of the Trust Estate of the Fund to the Trust Estate of another fund, before the trusts were revoked and the associated Fund wound-up.'*

*If APRA does not have a copy of this enactment, then as an alternative I seek a copy of a letter from the Transferor Trustee to APRA advising APRA of such an enactment, that would allow the Transferor Trustee to transfer around \$400 million without committing a Breach of Trust.'*

**Notice of decision**

I attach a notice of decision with statement of reasons. The statement of reasons sets out your rights of review.

Please contact me on 02 9210 3000 or [foi@apra.gov.au](mailto:foi@apra.gov.au) if you have any queries.

Yours sincerely

FOI Officer  
Australian Prudential Regulation Authority



**NOTICE OF DECISION MADE UNDER SECTION 23  
OF THE FREEDOM OF INFORMATION ACT 1982 (the FOI Act)  
WITH REASONS FOR DECISION PROVIDED UNDER SECTION 26**

- Applicant:** Mr Philip Sweeney
- Decision-maker:** An authorised officer of the Australian Prudential Regulation Authority (APRA) for the purposes of section 23(1) of the FOI Act.
- Relevant documents:** Request for documents relating to an Act of the Parliament of South Australia adding Regulation 52A to the wind up of Regulation 52, or alternatively a copy of the letter from the Transferor Trustee to APRA advising of such an enactment, in relation to the Transferor Fund the AusBev Superannuation Fund.
- My decision:** *Refuse access*, under subsection 24A(1) of the FOI Act, to the documents specified in the Applicant's request as they are not in APRA's possession.

**MATERIAL FACTS**

1. I refer to your request by email dated 13 March 2015, in which you sought access under the *Freedom of Information Act 1982* to copies of a s35 compliance report:

*'The document I seek is a copy of an Act of the Parliament of South Australia that would add Regulation 52A to the wind-up Regulation 52, to allow the Transfer of the Trust Estate of the Fund to the Trust Estate of another fund, before the trusts were revoked and the associated Fund wound-up.*

*If APRA does not have a copy of this enactment, then as an alternative I seek a copy of a letter from the Transferor Trustee to APRA advising APRA of such an enactment, that would allow the Transferor Trustee to transfer around \$400 million without committing a Breach of Trust.'*

By letter dated 26 March 2015, APRA acknowledged receipt of your request.

**EVIDENCE AND MATERIAL RELIED ON**

2. In making my decision, I have relied on the following evidence and material:
- a) the Applicant's request received by APRA on 13 March 2015;
  - b) acknowledgment email with attached letter from FOI Officer to the Applicant dated 26 March 2015;
  - c) email from Bradley Johnson, Manager Supervision Team on 7 April 2015;
  - d) file note written by FOI Officer dated 7 April 2015;
  - e) relevant sections of the *Superannuation Industry (Supervision) Act 1993*

- f) relevant sections of the *Australian Prudential Regulation Authority Act 1998*;
- g) relevant sections of the *Freedom of Information Act 1982*
  
- h) Guidelines issued by the Office of the Australian Information Commissioner to date.

### **REASONS FOR DECISION**

3. On 10 April 2015 the FOI Officer refused the request made by the Applicant based on s24A(1), as all reasonable steps have been taken by the FOI Officer in their own search and enquiries with relevant APRA staff to find the relevant documents, and they are not in APRA's possession.

#### **Section 24A**

4. Subsection 24A(1) of the FOI Act provides that an agency may refuse a request for access to a document if all reasonable steps have been taken to find the document, and the agency is satisfied that the document is either in the agency's possession but cannot be located, or does not exist.
5. Based on the information before me, APRA has taken all reasonable steps to locate the documents relevant to the request, and I am satisfied that no relevant documents exist. Accordingly, I have refused access under subsection 24A(1).

### **ADVICE TO APPLICANT AS TO RIGHTS OF REVIEW**

#### ***Application for Internal Review of Decision***

6. Pursuant to section 54 of the FOI Act, you have the right to apply for an internal review of the decision if you disagree with my decision. If you make an application for review, another officer of APRA will be appointed to conduct a review and make a completely fresh decision on the merits of the case.
7. Pursuant to section 54B of the FOI Act, you must apply in writing for a review of the decision within 30 days after the day the decision has been notified to you.
8. You do not have to pay any other fees or processing charges for an internal review, except for providing access to further material in the document released as a result of the review (for example, photocopying, inspection, etc).
9. No particular form is required to apply for review although it is desirable (but not essential) to set out in the application the grounds on which you consider that the decision should be reviewed.
10. Application for an internal review of the decision should be addressed to:

*FOI Officer, Secretary Group  
Australian Prudential Regulation Authority  
GPO Box 9836, Sydney NSW 2001  
Telephone: (02) 9210 3000  
Facsimile: (02) 9210 3020*

11. If you make an application for internal review and we do not make a decision within 30 days of receiving the application, the agency is deemed to have affirmed the original decision. However, under section 54D of the FOI Act, APRA may apply, in writing to the Information Commissioner for further time to consider the internal review.

### ***Application for review by Information Commissioner***

12. Pursuant to section 54L of the FOI Act, you have the right to apply to the Information Commissioner for a review of the original decision or a review of a decision made on review.

13. Any application must be in writing and must give details of an address where notices may be sent and include a copy of the original decision or the decision made on internal review.

14. An application for review by the Information Commissioner should be sent:

- Online: [www.oaic.gov.au](http://www.oaic.gov.au);
- Post: GPO Box 2999, Canberra ACT 2601
- Fax: +61 2 9284 9666
- Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)
- In person:  
Level 3, 25 National Circuit  
Forrest, ACT, or at  
Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney, NSW

### ***Application for review by Administrative Appeals Tribunal***

15. If the decision on review by the Information Commissioner is not to grant access to all of the documents within your request, you would be entitled to seek review of that decision by the AAT.

16. The AAT is a completely independent review body with the power to make a fresh decision. Your application to the AAT should be accompanied by a filing fee of \$816, unless you are granted legal aid or you come within an exempt category of persons. The AAT Registrar or Deputy Registrar may waive the fee on the ground that its payment would impose financial hardship on you. The fee may be refunded where you are successful. The AAT cannot award costs either in your favour or against you, although it may in some circumstances recommend payment by the Attorney-General of some or all of your costs. Further information is available from the AAT on 1300 366 700.

### ***Complaints to the Information Commissioner***

17. You may complain to the Commissioner concerning action taken by this agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Commissioner will conduct a completely independent investigation of your complaint.

18. You may complain to the Commissioner either orally or in writing, by any of the methods below.

- Telephone: 1300 363 992
- email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)
- GPO Box 2999, Canberra ACT 2601

- website at [www.oaic.gov.au](http://www.oaic.gov.au)

FOI Officer  
Australian Prudential Regulation Authority  
Date:

**s 24A Freedom of Information Act 1982**

**24A Requests may be refused if documents cannot be found, do not exist or have not been received**

*Document lost or non-existent*

(1) An agency or Minister may refuse a request for access to a document if:

(a) all reasonable steps have been taken to find the document; and Access to documents **Part III**  
Section 25 *Freedom of Information Act 1982* 47

(b) the agency or Minister is satisfied that the document:

- (i) is in the agency's or Minister's possession but cannot be found; or
- (ii) does not exist.

*Document not received as required by contract*

(2) An agency may refuse a request for access to a document if:

(a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and

(b) the agency has not received the document; and

(c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

