

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY

1 Martin Place (Level 12), Sydney, NSW 2000
GPO Box 9836, Sydney, NSW 2001
T 02 9210 3000 | W www.apra.gov.au



APRA

FOI 24-06

3 August 2023

Phillip C. Sweeney

By email: foi+request-10467-58e22ed2@righttoknow.org.au

Dear Mr Sweeney,

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

Applicant: Phillip C. Sweeney

Decision-maker: Sharon (person number 101189), an authorised officer of the Australian Prudential Regulation Authority (**APRA**) for the purposes of subsection 23(1) of the FOI Act.

FOI request: *'The document or documents I seek is/are any correspondence from AFCA to APRA that makes mention of NULIS Nominees (Aust) Ltd making a representation to AFCA that NULIS was not the "correct financial firm" or words to that effect in correspondence to AFCA dated 20 May 2021 {or making reference to Section 1052E of the Corporations Act 2001} with respect to the administration of a particular Defined Benefit Regulated Superannuation Fund, when in fact NULIS has administered this particular Defined Benefit fund since 1 July 2016 and which is legally identified by the Trust Deed dated 23 December 1913 which constituted and established this superannuation trust (fund)...'*

(FOI request)

My decision: Refuse access to the relevant documents based on the reasons outlined in this Notice of Decision.

MATERIAL FACTS

1. On 12 July 2023, you made the FOI request by email under the FOI Act.
2. On 18 July 2023, APRA acknowledged receipt of the FOI request by email.

EVIDENCE AND MATERIAL RELIED ON

3. In making my decision, I have relied on the following evidence and material:
 - a. the Applicant's FOI request received by APRA on 12 July 2023;
 - b. the acknowledgment email from the FOI Officer to the Applicant dated 18 July 2023;
 - c. internal APRA email correspondence from 12 July 2023 to 3 August 2023;
 - d. relevant sections of the FOI Act; and
 - e. the guidelines issued by the Office of the Australian Information Commissioner to date (**FOI Guidelines**).
4. APRA has conducted all reasonable searches of its records in order to identify the documents relevant to your FOI request (**relevant documents**).

REASONS

5. I have decided to refuse access to the relevant documents. My reason for the refusal is as follows.

Documents cannot be found, do not exist or have not been received

6. APRA has taken all reasonable steps to locate the documents relevant to the FOI request and I have concluded that the documents cannot be found, do not exist or have not been received. Accordingly, I refuse the FOI request for access to the documents under section 24A of the FOI Act.

RIGHTS OF REVIEW

Application for Internal Review of decision

7. Under 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 the review and make a fresh decision on the merits of the case.
8. Under 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.
9. You do not have to pay any other fees or processing charges for an internal review, except fees and charges applicable for providing access to further material, if any, in the document released as a result of the review (for example, photocopying, inspection, etc).
10. 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.
11. An application for internal review of the decision should be addressed to:

FOI Officer
Australian Prudential Regulation Authority
GPO Box 9836
Sydney NSW 2001

Telephone: (02) 9210 3000
Email: foi@apra.gov.au

12. If you make an application for internal review and we do not make a decision within 30 days of receiving the application, APRA 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

13. Under 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 (amongst other things).
14. Any application must be in writing and include your name and contact details, a copy of the decision which you disagree with and the reason(s) why you disagree with the decision.
15. An application for review by the Information Commissioner may be lodged with one of the following:

Online	Complete and lodge the online FOI review form at: Apply for an Information Commissioner review OAIC
Post or email	Download and complete the FOI review form and send it by: Post: Director of FOI Dispute Resolution GPO Box 5288, Sydney NSW 2001 Email: foidr@oaic.gov.au

16. More information about making an application for review by the Information Commissioner is available at: [Apply for an Information Commissioner review | OAIC](#).

Application for review by Administrative Appeals Tribunal

17. You may be entitled to seek review of the Information Commissioner's decision by the Administrative Appeals Tribunal (**AAT**).
18. The AAT is an independent review body with the power to make a fresh decision. An application fee must usually be paid for an application to the AAT for a review of an FOI decision. Further information is available from the AAT at: [Freedom of information \(FOI\) | Administrative Appeals Tribunal \(aat.gov.au\)](#).
19. More information about your review rights under the FOI Act is available at: [Part 10: Review by the Information Commissioner | OAIC](#).

Complaints to the Information Commissioner

20. You may complain to the Information Commissioner concerning action taken by APRA in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Information Commissioner will conduct an independent investigation of your complaint.
21. More information about your right to make a complaint, including the manner in which you may do so, is available at: [Freedom of information complaints | OAIC](#).

Sharon (person number 101189)
FOI Officer
Australian Prudential Regulation Authority

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
 - (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.