



FOI 24-43

11 June 2024

ELCAP
Compliance Associate
Right to know

Sydney

1 Martin Place (Level 12), NSW 2000
GPO Box 9836, Sydney NSW 2001
Australian Prudential Regulation Authority
02 9210 3000 | apra.gov.au

By email: foi+request-11369-8d937751@righttoknow.org.au

Dear ELCAP,

SECTION 24AB REQUEST CONSULTATION PROCESS (PRACTICAL REFUSAL) UNDER THE *FREEDOM OF INFORMATION ACT 1982* (CTH) (FOI ACT)

I refer to your request received on 19 February 2024 for access to documents under the FOI Act:

'I am writing to request documents under the Freedom of Information Act 1982 that are held by the Australian Prudential Regulation Authority (APRA) and pertain to the Trio Capital case.

The specific documents I am interested in are:

Records that provide evidence of fraudulent activities in the management of Trio Capital's funds, as well as documents about the evaluation for compensation under the Superannuation Industry (Supervision) Act 1993 (SIS Act).

Documents related to the information given by the former Secretary to the Treasury, Ken Henry, to regulators both in Australia and globally. It has been reported in Australian media that the whistleblower was a blogger who had connections to Ken Henry.

Specific documents associated with an equity joint venture managed by Empyreal SPC Limited. This includes, but is not limited to, contracts, agreements, financial audits, and any related correspondence.

Communications and emails regarding the value of the Equity JV and its eligibility to be classified as fraudulent under the provisions of the Superannuation Industry (Supervision) Act 1993 (SIS Act).

Notes concerning any individuals linked with Empyreal SPC and any internal consultations or official misconduct complaints.

I would be grateful if the documents could be provided in a digital format. If there are any charges associated with the search or copying of these documents, please inform me prior to proceeding.

Should you need any further clarification regarding this request, please feel free to contact me.'

I, Kathryn (Person number: 101613), am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

Intention to refuse your request

I have determined that a 'practical refusal reason' exists in relation to your request under section 24AA of the FOI Act, and I therefore intend to refuse access to the documents you have requested. However, prior to my final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as outlined under section 24AB of the FOI Act.

Why I intend to refuse your request

Substantial and unreasonable diversion of resources

Subsection 24AA(1)(a)(i) of the FOI Act provides that if the work involved in processing a request to an agency for access to documents substantially and unreasonably diverts the resources of the agency from its other operations, then a practical refusal reason exists.

Having considered subsection 24AA(2) of the FOI Act, I have decided that the work involved in locating the documents that are responsive to your request would substantially and unreasonably divert the resources of APRA from its other operations.

Please also be advised that the secrecy provision in section 56 of the *Australian Prudential Regulation Authority Act 1998 (APRA Act)* prohibits APRA from disclosing protected documents or protected information as defined under the APRA Act, except if an exemption applies. Subsection 56(11) of the APRA Act provides that a protected document or a document that contains protected information will be exempt for the purposes of section 38 of the FOI Act.

Request consultation process

You now have an opportunity to revise your request to enable APRA to continue processing it. You could revise your request, for example, by refining the scope of the request so that it is more manageable, or explaining in more detail the documents you are requesting access to. By providing more information about exactly what documents you are interested in or providing or revising the time period for the request, our agency will be able to locate the documents promptly and avoid using excessive resources to process documents that you are not interested in.

Before the end of the consultation period, you must do one of the following in writing:

- withdraw your request; or
- revise your request; or
- tell us that you do not intend to revise your request.

The consultation period continues for 14 days and commences on the day after you receive this notice.

Within this period, you are welcome to ask for assistance from the contact person I have provided below to revise your request. If you revise your request in a way that adequately addresses the practical refusal reason outlined above, APRA will continue processing it. Please also be advised that the time used to consult with you in relation to the scope of your request is not included in the statutory processing period for your request.

If you do not do one of the actions above during the consultation period, or you do not consult the contact person during this period, your request will be deemed withdrawn.

Contact officer

If you would like to revise your request or have any questions, the contact officer for your request is:

FOI Officer
Australian Prudential Regulation Authority
GPO Box 9836
Sydney NSW 2001
Email: foi@apra.gov.au

Yours sincerely

Kathryn (Person number: 101613)
Australian Prudential Regulation Authority