



Ref no. 15/002714

30 September 2015

Julie Simpson

By email: [foi+request-1196-a951a13a@righttoknow.org.au](mailto:foi+request-1196-a951a13a@righttoknow.org.au)

Dear Julie Simpson

**FOI Application dated 31 August 2015**

I refer to your request dated 31 August 2015 (FOI request), which was acknowledged by APRA on 14 September.

In your request you sought access under the *Freedom of Information Act 1982* (Cth) to the following documents:

*“The first document the applicant seeks is a copy of the first page of the “approved form” that was submitted to APRA pursuant to Section 145(2) of the SIS Act.*

*The second document the applicant seeks is a copy of any correspondence from Vision Super Pty Ltd to APRA confirming that the fund amalgamation had been completed which would allow APRA to update its database of active registered funds and their Trustees”.*

**Explanation**

All reasonable steps have been taken to find documents sought in your FOI request. Attached is the notice of decision with statement of reasons. The statement of reasons also sets out your rights of review.

Please contact me on 02 9210 3100 or [foi@apra.gov.au](mailto:foi@apra.gov.au) if you have any queries.

Yours sincerely

Ben Carruthers  
FOI Officer  
Tel: 02 9210 3000  
Fax: 02 9210 3430  
[foi@apra.gov.au](mailto:foi@apra.gov.au)

**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:** Julie Simpson
- Decision-maker:** Ben Carruthers, an authorised officer of the Australian Prudential Regulation Authority (APRA) for the purposes of subsection 23(1) of the FOI Act
- Relevant documents:** The first page of the approved form submitted to APRA in respect of an amalgamation between Vision Super and Local Authorities Super Fund pursuant to Section 145(2) of the SIS Act, and correspondence from Vision Super Pty Ltd to APRA confirming that the fund amalgamation had been completed
- My decision:** Refuse access under section 24A(1)(b)(ii) of the FOI Act, on the basis that the documents do not exist.

**MATERIAL FACTS**

1. By email dated 31 August 2015 and received by APRA on 31 August 2015, the Applicant sought the following documents in respect of an amalgamation between Vision Super and Local Authorities Super Fund pursuant to Section 145(2) of the SIS Act:

*“The first document the applicant seeks is a copy of the first page of the "approved form" that was submitted to APRA pursuant to Section 145(2) of the SIS Act.*

*The second document the applicant seeks is a copy of any correspondence from Vision Super Pty Ltd to APRA confirming that the fund amalgamation had been completed which would allow APRA to update its database of active registered funds and their Trustees”.*

2. On 14 September 2015 APRA acknowledged the request.

**EVIDENCE AND MATERIAL RELIED ON**

3. In making my decision, I have relied on the following evidence and material:
  - a) the Applicant’s request received on 31 August 2015;
  - b) acknowledgment email with attached letter from FOI Officer to the Applicant dated 14 September 2015;
  - c) consultation with Manager, Supervision on 21 September 2015;
  - d) paragraphs 8-10 of the Internal Review Notice of Decision to Julie Simpson dated 28 April 2015, Ref no. 15/000980;
  - e) relevant sections of the *Superannuation Industry (Supervision) Act 1993 (SIS Act)*;

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

#### **REASONS FOR DECISION**

- 4. Your request seeks documents relating to an amalgamation process between Vision Super and Local Authorities Super Fund had that process taken place under section 145 of the SIS Act.
- 5. Based on internal document searches and the advice of the relevant APRA staff, I am satisfied that APRA does not possess documents that respond to your request.
- 6. On 30 September 2015, I have decided to refuse access under sections 24A(1)(b)(ii) of the FOI Act.

#### **EXPLANATION OF LEGISLATION**

- 7. 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.
- 8. APRA is not required to create a new document to satisfy an FOI request (see page 41 of the OAIC Guidelines).
- 9. Based on the information before me, APRA has taken all reasonable steps to locate the requested document, and I am satisfied that APRA does not hold the requested document. Accordingly, I have refused access under section 24A(1)(b)(ii) of the FOI Act.
- 10. An extract of section 24A of the FOI Act is attached.

#### **COMMENT**

- 11. There are different ways in which a superannuation fund may transfer its business to another fund. Section 145 of the SIS Act is one of those ways. Superannuation funds may transfer their business to other funds through other means including a successor fund transfer (instead of applying section 145 of the SIS Act).
- 12. If a superannuation fund transfer was done under section 145 of the SIS Act and a section 145(2) form did exist, the document and any associated correspondence would be protected in accordance with section 56 of the APRA Act, unless the material was otherwise publicly available. Accordingly, the documents would be exempt from release under section 38 of the FOI Act.
- 13. Essentially all correspondence between APRA and the entities it regulates is conducted under a prudential regulation framework law and would be 'protected' in accordance with section 56 of the APRA Act. It is offence for an APRA staff member (including me) to disclose a protected document or protected information unless an exception to section 56 applies. The offence is punishable by up to two years imprisonment.



## ADVICE TO APPLICANT AS TO RIGHTS OF REVIEW

### *Application for review by Information Commissioner*

14. 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.
15. 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.
16. 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*

17. 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.
18. The AAT is an independent review body with the power to make a fresh decision. Your application to the AAT should be accompanied by a filing fee of \$777, 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*

19. 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 an independent investigation of your complaint.
20. 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)



Ben Carruthers  
Senior Manager - Legal  
Australian Prudential Regulation Authority

Date: 30.9.15

*Freedom of Information Act 1982 (Cth)*

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.

