



Ref no. 15/002771

15 October 2015

Mr Phillip Sweeney

By email: [foi+request-1237-52daa0c0@righttoknow.org.au](mailto:foi+request-1237-52daa0c0@righttoknow.org.au)

Dear Mr Sweeney

**FOI Application dated 22 September 2015**

I refer to your request dated 22 September (your request), which was acknowledged by APRA on 30 September.

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

“...copies of any correspondence including attachments sent to Victoria Police to assist the Police in a matter that relates to the Elders IXL Superannuation Fund and access to the Deeds of this Fund. This fund was more recently known as the AusBev Superannuation Fund...

...

The search period is from 1 August 2015.”

All reasonable steps have been taken to find documents sought in your 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:** Phillip Sweeney

**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:** Correspondence from 1 August 2015 from APRA to the Victorian Police in relation to access to the Deeds of the Elders IXL Superannuation Fund (**Elders**), more recently known as the AusBev Superannuation Fund (**AusBev**)

**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 22 September 2015 and received by APRA on 22 September 2015, the Applicant sought the following documents:

“...copies of any correspondence including attachments sent to Victoria Police to assist the Police in a matter that relates to the Elders IXL Superannuation Fund and access to the Deeds of this Fund. This fund was more recently known as the AusBev Superannuation Fund...

...

The search period is from 1 August 2015.”

2. On 30 September 2015 APRA acknowledged the request.

**EVIDENCE AND MATERIAL RELIED ON**

3. In making my decision, I have relied on my personal knowledge and the following evidence and material:
  - a) the Applicant’s request received on 22 September 2015;
  - b) acknowledgment email with attached letter from FOI Officer to the Applicant dated 30 September 2015;
  - c) relevant sections of the *Superannuation Industry (Supervision) Act 1993*;
  - d) relevant sections of the *Australian Prudential Regulation Authority Act 1998*;
  - e) relevant sections of the *Freedom of Information Act 1982*; and
  - f) Guidelines issued by the Office of the Australian Information Commissioner to date.

## REASONS FOR DECISION

4. Your request seeks correspondence from 1 August 2015 from APRA to the Victorian Police in relation to access to the Deeds of Elders and/or AusBev.
5. Based on internal document searches and the advice of the relevant APRA staff, I am satisfied that APRA does not possess any documents that respond to your request.
6. On 15 October 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. 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.
9. An extract of section 24A of the FOI Act is attached.

## ADVICE TO APPLICANT AS TO RIGHTS OF REVIEW

### *Application for review by Information Commissioner*

10. 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.
11. 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.
12. 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*

13. 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.
14. 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*

15. 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.
16. 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: 15.10.15



***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.