

**AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY**

Level 12, 1 Martin Place, Sydney, NSW, 2000  
GPO Box 9836, Sydney, NSW, 2001

T 02 9210 3000 | W [www.apra.gov.au](http://www.apra.gov.au)

---



Ref no. 16/001545

21 July 2016

Mr Phillip Sweeney

By email: [foi+request-1928-525e63ca@righttoknow.org.au](mailto:foi+request-1928-525e63ca@righttoknow.org.au)

Dear Mr Sweeney

**Notice of charge decision following applicant contention that charge be reduced or not imposed**

On 9 May 2016, you made a request under the *Freedom of Information Act 1982* (Cth) (FOI Act) for the following information (your FOI request):

*"a directive from APRA to either of the out-of-jurisdiction purported corporate trustees, CCSL Ltd or PFS Nominees Pty Ltd, seeking a copy of the original Trust Deed executed on the 23 December 1913 and copies all amending Deeds executed in accordance with the provisions of the amending power reserved in the original Trust Deed."*

APRA acknowledged your FOI request and on 19 May 2016 APRA issued a preliminary assessment of charges in the amount of \$247.50.

On 29 June 2016 you requested a waiver of charges on the grounds of the public interest as set out under section 9(5)(b) of the FOI Act, on the basis that:

*"the charges to be imposed are excessive and should be waived on the grounds of "public interest"."*

**Decision**

I have decided under section 29 of the FOI Act not to vary the original assessment of the charge. You are therefore liable to pay a fee of \$247.50, with a deposit amount of \$61.90 within 30 days, by 20 August 2016.

The reasons for my decision under section 29(4) are set out below.

***Reasons for my decision***

In making my decision, I have considered the following factors outlined in section 29(5) of the FOI Act and in your request to review the charges:

- whether payment of a charge, or part of it, would cause you financial hardship;
- whether the giving of access to the documents is in the general public interest or in the interest of a substantial section of the public; and
- whether the charge is excessive.

In your contention of charges, you have not suggested the charge would cause you financial hardship. Nor have you provided any evidence to support a finding that payment of the charge would cause you financial hardship.

There are no public interest grounds to waive the charges. Due to the nature of the request, any documents that may respond to your request are most likely subject to APRA's secrecy provisions. Accordingly, whether or not you pay the charge, it seems unlikely that APRA will be in a position to release any documents that may respond to your request.

In respect of your contention that the charge estimate is excessive, I have reviewed the relevant time estimate and consider that the estimate of 16.5 hours fairly reflects the work involved in providing access, for the following reasons:

- The FOI team at APRA has already spent around 3 hours processing your request, including liaising with relevant teams within APRA. This time has not been included in the estimate of charges;
- As your request relates to two regulated entities, CCSL Limited and PFS Nominees Limited, it is necessary for the FOI team to liaise with two different supervision teams within APRA;
- You have made numerous FOI requests since 2009. APRA's supervision teams have considerable experience in reviewing APRA's databases and files in response to your FOI requests;
- APRA's supervision team in respect of CCSL Limited estimated it would take around 4 hours to review APRA's database and around 10 files may be relevant to your request and would need to be reviewed;
- APRA's supervision team in respect of PFS Nominees Limited estimated that around 19 files may be relevant to your request and would need to be reviewed. To be conservative, we rounded this number down to 15;

- as previously stated, APRA's normal practice is to estimate it will take around one hour to review each file. However in the circumstances and in the interests of charging the lowest reasonable rate, we allowed a review time of around 30 minutes each;
- in light of the above, APRA estimate a search and retrieval time of 16.5 hours, based on four hours to review APRA's databases and 12.5 hours to review 25 files (10 files for CCSL and 15 files for PFS Nominees);
- search and retrieval time is charged at \$15 per hour;
- the total preliminary assessment of charge was \$247.50 (16.5 hours at \$15 per hour).

In light of the above, I find the preliminary assessment of the charge to be fair and reasonable, and I confirm the charge.

If you choose to proceed and pay this charge, I must reiterate that documents that respond to your FOI request would likely be protected documents. As discussed, protected documents are prohibited from release under the secrecy provision of section 56 of the *Australian Prudential Regulation Authority Act 1998* (Cth), and therefore exempt from release under section 38 of the FOI Act. I would therefore not be able to legally provide you with any protected documents we may find in response to your request.

### ***Your review rights***

If you are dissatisfied with my decision in relation to the charge, you may apply for an Information Commissioner review of the decision.

### **Information Commissioner review**

Under section 54L of the FOI Act, you may apply directly to the Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

- online: <https://forms.business.gov.au/aba/oaic/foi-review-/>
- post: GPO Box 2999, Canberra ACT 2601
- fax: 02 9284 9666
- in person: Level 3, 175 Pitt Street, Sydney NSW

### ***Next steps in processing your request***

In accordance with section 31 of the FOI Act, the 30 day time limit is suspended from the date you were notified of the charge until the earliest occurring of the following days:

- the day you pay the amount of the charge (or deposit)

- if the amount of the charge is changed following review under the FOI Act - the day you pay the revised charge (or deposit)
- if, following review under the FOI Act, a decision is made not to impose a charge - the day you are notified of that decision.

***Payment of a deposit***

As the charge exceeds \$100, a 25 per cent deposit of \$61.90 must be paid to enable processing of your request to continue (in accordance with reg 12 of the *Freedom of Information (Charges) Regulations 1982* (Cth)).

The deposit is not refundable except in some limited circumstances (for example, if APRA fails to make a decision on your request within the statutory time limit), or may be refunded in part if the final charge is less than the deposit paid.

Payment of any deposit or charge should be made by crossed cheque made out to "Australian Prudential Regulation Authority". Please send the cheque directly to:

The FOI Officer  
Australian Prudential Regulation Authority  
GPO Box 9836  
SYDNEY NSW 2001

***Questions about this decision***

Please contact me with any questions in respect of this notice or this FOI request.

Yours sincerely



Ben Carruthers  
FOI Officer  
Tel: 02 9210 3000  
Fax: 02 9210 3411  
[foi@apra.gov.au](mailto:foi@apra.gov.au)