



Ref no. 16/001546

3 June 2016

Phillip Sweeney

By email: [foi+request-1929-fb947942@righttoknow.org.au](mailto:foi+request-1929-fb947942@righttoknow.org.au)

Dear Mr Sweeney

**Request for access to documents under the *Freedom of Information Act 1982* (Cth) (FOI Act)**

I refer to your email dated 9 May 2016 (your **FOI request**) which was received by the Australian Prudential Regulation Authority (APRA) on 9 May 2016.

In your FOI request you sought the following information:

*“an information bulletin or similar letter or document that APRA has circulated to Trustees with a RSE licence advising them of the need not to participate in adversarial litigation with members or beneficiaries without first having sought advice and directions from a court of competent jurisdiction”.*

APRA acknowledged receipt of your FOI request on 19 May 2016.

Attached is the notice of decision with statement of reasons. The statement of reasons also sets out your rights of review.

Please contact me if you have any queries.

Yours sincerely

Ben Carruthers

FOI Officer

Tel: 02 9210 3000

Fax: 02 9210 3411

[foi@apra.gov.au](mailto:foi@apra.gov.au)

**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**

**Applicant:** Phillip Sweeney

**Decision-maker:** Ben Carruthers, an authorised officer of the Australian Prudential Regulation Authority (APRA) for the purposes of section 23(1) of the FOI Act.

**Relevant documents:** Request for documents relating to an information bulletin, letter or other document circulated by APRA to RSE licensees relating to seeking advice or directions from a court before participating in litigation with members or beneficiaries.

**My decision:** *Refuse access*, under section 24A of the FOI Act, to the document specified in the Applicant's request because the document does not exist or cannot be found.

**MATERIAL FACTS**

1. I refer to your email dated 9 May 2016, in which you sought access under the FOI Act to:

*"an information bulletin or similar letter or document that APRA has circulated to Trustees with a RSE licence advising them of the need not to participate in adversarial litigation with members or beneficiaries without first having sought advice and directions from a court of competent jurisdiction."*

(your FOI request).

2. By email dated 19 May 2016, APRA acknowledged receipt of your request.
3. By email dated 21 May 2016 you clarified that you sought document(s) produced by APRA such as a bulletin, brochure, Insight document, Information Paper or prudential standard. You clarified that you sought documents sent to all trustees and not a document that may only have been sent to one particular trustee or a few trustees at different times.

**EVIDENCE AND MATERIAL RELIED ON**

4. In making my decision, I have relied on the following evidence and material:
  - a) the Applicant's request received by APRA on 9 May 2016;
  - b) acknowledgment email from FOI Officer to the Applicant dated 19 May 2016;
  - c) email correspondence between the FOI Officer and the Applicant dated 20 to 21 May 2016;

- d) email correspondence between Senior Manager, Legal and Head Media & Communications on 19 May 2016;
- e) email correspondence between member of FOI team and Senior Manager, Legal dated 25 May 2016;
- f) correspondence between Senior Manager, Legal and the Secretary, Superannuation Industry Group dated 2 June 2016;
- g) email correspondence between Senior Manager, Legal and the former Secretary, Superannuation Industry Group dated 3 June 2016;
- h) correspondence between Senior Manager, Legal and Principal Solicitor, Superannuation Industry Group dated 3 June 2016;
- i) relevant sections of the *Australian Prudential Regulation Authority Act 1998* (Cth) (APRA Act);
- j) relevant sections of the FOI Act; and
- k) guidelines issued by the Office of the Australian Information Commissioner to date (FOI Guidelines).

## REASONS FOR DECISION

- 5. APRA has conducted all reasonable searches of its records to identify documents relevant to your request.
- 6. I am satisfied that the documents cannot be found or do not exist. Accordingly, I have refused access under subsection 24A of the FOI Act.
- 7. I note that any guidance material provided by APRA to all trustees is generally published on APRA's public website.

## ADVICE TO APPLICANT AS TO RIGHTS OF REVIEW

### *Application for Internal Review of Decision*

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

12. Application for an 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  
Facsimile: (02) 9210 3411*

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

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. An application to the AAT for a review of an FOI decision does not attract a fee. 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 outlined above, or by telephone, on 1300 363 992.



Ben Carruthers  
FOI Officer  
Australian Prudential Regulation Authority  
Date:

3.6.16

***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.