



Ref no. APRA 16/001582

29 June 2016

Phillip Sweeney

By email: foi+request-1967-672762fc@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 27 May 2016 (your FOI request) which was received by the Australian Prudential Regulation Authority (APRA) on 27 May 2016.

In your FOI request you sought the following information:

"I refer to a letter dated 18 April 2016 that ASIC has recently sent to the providers of life insurance products following a direction from the Assistant Treasurer to investigate the claims handling procedures across the industry following the CommInsure scandal.

In this letter the following is stated:

"We understand that APRA may be writing to you in relation to similar matters".

The document I seek such a document. The name and address of the party to whom the letter has been addressed can be redacted and I only need one example, not a redacted copy of every letter sent".

APRA acknowledged receipt of your FOI request on 9 June 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

**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 a letter sent to the providers of life insurance products in respect of claims handling procedures.
- My decision:** *Defer access*, under section 21(1)(c) of the FOI Act, to the documents specified in the Applicant's request because the premature release of the documents concerned would be contrary to the public interest.

MATERIAL FACTS

1. I refer to your email dated 27 May 2016, in which you sought access under the FOI Act to:

"I refer to a letter dated 18 April 2016 that ASIC has recently sent to the providers of life insurance products following a direction from the Assistant Treasurer to investigate the claims handling procedures across the industry following the Comminsure scandal.

In this letter the following is stated:

"We understand that APRA may be writing to you in relation to similar matters".

The document I seek such a document. The name and address of the party to whom the letter has been addressed can be redacted and I only need one example, not a redacted copy of every letter sent."

(your FOI request).

2. By letter dated 9 June 2016, APRA acknowledged receipt of your 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 by APRA on 27 May 2016;
 - b) acknowledgment email from FOI Officer to the Applicant dated 9 June 2016;
 - c) email correspondence between Senior Manager, Legal and Head Media & Communications on 30 May 2016;

- d) email correspondence between Senior Manager, Legal and General Manager, Diversified Institutions Division on 30 May 2016;
- e) email correspondence between Senior Manager, Legal and General Manager, Diversified Institutions Division on 28 June 2016;
- f) correspondence with APRA's General Counsel;
- g) relevant sections of the *Australian Prudential Regulation Authority Act 1998* (Cth) (APRA Act);
- h) relevant sections of the FOI Act; and
- i) guidelines issued by the Office of the Australian Information Commissioner to date (FOI Guidelines).

REASONS FOR DECISION

- 4. APRA has identified documents relevant to your FOI request (**Relevant Documents**).
- 5. I have decided to defer access to the Relevant Documents under subsection 21(1)(c) of the FOI Act, which provides that an agency may defer access if the premature release of the document would be contrary to the public interest. Access may be deferred until the occurrence of any event after which the release of the document would not be contrary to the public interest.
- 6. I have decided to defer access for the following reasons:
 - a. the request relates to important prudential issues in the Life Insurance Industry in respect of claims handling procedures;
 - b. APRA will consider the responses to the letter and publish material later in the year, although that decision has not been finalised;
 - c. it is possible that sometime in the future APRA will release the substance of the Relevant Documents;
 - d. I consider that there is no public interest in releasing the Relevant Documents now when APRA is considering releasing the substance of the Relevant Documents; and
 - e. at this time, premature disclosure of the Relevant Documents could reasonably be expected to prejudice the effectiveness of APRA's procedure of gathering information from regulated entities.

ADVICE TO APPLICANT AS TO RIGHTS OF REVIEW

Application for Internal Review of Decision

- 7. 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.

8. 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.
9. 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).
10. 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.
11. 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*

12. 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

13. 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.
14. 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.
15. An application for review by the Information Commissioner should be sent:
 - Online: www.oaic.gov.au
 - Post: GPO Box 2999, Canberra ACT 2601
 - Fax: +61 2 9284 9666
 - Email: 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

16. 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.
17. 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

18. 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.
19. 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: 29.6.16

FREEDOM OF INFORMATION ACT 1982

21 Deferment of access

- (1) An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned:
 - (a) if the publication of the document concerned is required by law—until the expiration of the period within which the document is required to be published; or
 - (b) if the document concerned has been prepared for presentation to Parliament or for the purpose of being made available to a particular person or body or with the intention that it should be so made available—until the expiration of a reasonable period after its preparation for it to be so presented or made available; or
 - (c) if the premature release of the document concerned would be contrary to the public interest—until the occurrence of any event after which or the expiration of any period of time beyond which the release of the document would not be contrary to the public interest; or
 - (d) if a Minister considers that the document concerned is of such general public interest that the Parliament should be informed of the contents of the document before the document is otherwise made public—until the expiration of 5 sitting days of either House of the Parliament; or
 - (e) if:
 - (i) the request is received by a Norfolk Island Minister or a Norfolk Island authority; and
 - (ii) a Norfolk Island Minister considers that the document concerned is of such general public interest that the Legislative Assembly of Norfolk Island should be informed of the contents of the document before the document is otherwise made public;until the end of 5 sitting days of the Legislative Assembly of Norfolk Island.
- (2) Where the provision of access to a document is deferred in accordance with subsection (1), the agency or Minister shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.

