

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY

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GPO Box 9836, Sydney, NSW, 2001

T 02 9210 3000 | W www.apra.gov.au



Ref no. 16/001773

10 August 2016

Phillip Sweeney

By email: foi+request-2057-3d6c719c@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 15 July 2016 (your FOI request) which was received by the Australian Prudential Regulation Authority (APRA) on 15 July 2016.

In your FOI request you sought the following information:

"The document I seek is a covering letter from PFS Nominees Pty Ltd to APRA attached to which would have been a copy of the genuine Trust Deed dated 23 December 1913.

A copy of the Trust Deed is not required, just a copy of the covering letter to APRA."

APRA acknowledged receipt of your FOI request on 20 July 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

A handwritten signature in blue ink, appearing to be 'B Carruthers'.

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 the covering letter of the genuine Trust Deed dated 23 December 1913.
- 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 15 July 2016, in which you sought access under the FOI Act to:

"The document I seek is a covering letter from PFS Nominees Pty Ltd to APRA attached to which would have been a copy of the genuine Trust Deed dated 23 December 1913.

A copy of the Trust Deed is not required, just a copy of the covering letter to APRA."

(your FOI request).

2. By email dated 20 July 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 15 July 2016;
 - b) acknowledgment email from FOI Officer to the Applicant dated 20 July 2016;
 - c) email correspondence between Senior Manager, Legal and Manager, Supervision Team on 3 August 2016;
 - d) relevant sections of the *Australian Prudential Regulation Authority Act 1998 (Cth) (APRA Act)*;
 - e) relevant sections of the FOI Act; and
 - f) guidelines issued by the Office of the Australian Information Commissioner (**FOI Guidelines**).

REASONS FOR DECISION

4. APRA has conducted all reasonable searches of its records to identify documents relevant to your request.
5. Based on the information before me, I am satisfied that the documents cannot be found or do not exist. Accordingly, I have refused access to the documents under section 24A of the FOI Act.
6. I note that from 2012 to 2014 you have made five specific requests for the Trust Deed which is associated with your request (**Trust Deed**). These requests were refused on the basis that APRA did not possess the Trust Deed. If APRA does not have the Trust Deed, it follows that APRA would not have any covering letter.
7. For your reference, I attach a table setting out the five FOI requests you have made for the Trust Deed.

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
 - 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

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: 10-8-16

FOI REQUESTS FROM MR SWEENEY - TRUST DEED DATED 23 DECEMBER 1913

No.	Date Received	Request	Access Decision
1	19 December 2015	The documents I seek are as follows: (i) a copy of any covering letter where APRA has returned Deeds executed before 1 July 2006 associated with this fund that were not duty stamped to the purported trustee, CCSL	Deemed withdrawal
2	29 January 2013	The document I seek is a copy of trust deed and the terms of the trust executed on 23 December 1913 in the State of South Australia where: <ul style="list-style-type: none"> - The settler was Elder Smith & Co Limited (later taken over by Elder Smith Goldsbrough Mort Limited and now called Foster's Group Pty Ltd) - Where the amount initially settled on the three trustees was £30,000 plus and additional £10,000 each by two "Adelaide Gentlemen" - Where the objects of the trust were "male officers" - Where the benefit was a pension for life for qualifying officers based on 1/60th of pensionable salary times years of service - Where the Company had an obligation to make the original Deed and subsequent Deeds of Variation available at head office for inspection by the "male officers" - Where the Board of Directions of the Company had conditional Power of Amendment subject to the written assent of the majority of the Three Trustees 	Refuse access under FOI Act section 24A - documents cannot be found or do not exist
3	5 October 2012	The documents I seek relate to the Trust Deed and Rules of the AusBev Superannuation Fund (previously called the Foster's Group Superannuation Fund) administered by the Trustee CCSL Limited (RSE L0000758). ... The documents I seek is a copy of this founding Deed (if APRA has possession of a copy) plus copies of any Resolutions, Deeds of Amendment and Amending Deeds executed from 12 December 1913 up until 30 April 1980 for this Fund.	Refuse access under FOI Act section 24A - documents cannot be found or do not exist

4	5 October 2012	<p>The documents I seek are copies of any correspondence between APRA and Mr Nicholas Brookes from June 25 2010 until 31 August 2011 in which the following subjects were mentioned:</p> <ul style="list-style-type: none"> - Allowing access to the Trust Deed and Rules of the Fund (with or without specific reference to Rule 1.7.4), AND/OR - Providing copies of all the Trust Deed and Rules from 1913 onwards (with or without specific reference to Section 1017C of the Corporations act 2001 or the conditions imposed on the Trustee's RSE Licence), AND/OR - The Trustee confirming possession of the Deeds mentioned in the letter dated 24 June 2010, AND/OR - The trustee providing copies of these Deeds to APRA, AND/OR - The Trustee providing APRA with access to inspect these Deeds 	Refuse access under FOI Act section 24A - documents cannot be found or do not exist
5	22 September 2011	<p>The documents I seek are:</p> <ul style="list-style-type: none"> - A letter from the Trustee CCSL Limited to APRA (or from the previous Trustee Foster's Group Superannuation Limited) informing APRA that the Trustee was not in possession of the founding Trust Instrument and most of the subsequent amendments 	Refuse access under FOI Act section 24A - documents cannot be found or do not exist

FREEDOM OF INFORMATION ACT 1982

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.