

Our Ref: 29894/16



ASIC

Australian Securities & Investments Commission

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Dear Mr Sweeney

Request Under the Freedom of Information Act 1982 For Access to Documents

I refer to your request under the *Freedom of Information Act 1982 (FOI Act)* received by this office on 17 August 2016 in which you sought access to the following documents regarding the AusBev Superannuation Fund (previously the Fosters Group Superannuation Fund) (the **Fund**):

- "Copies of the letters or emails sent to ASIC by Senator Williams or his staff in relation to the administration and documents associated with this superannuation fund as well as copies of the responses provided by ASIC to Senator Williams or his office staff.
- One of the topics covered in this correspondence is the concealment of Deeds of the Fund from current and former members of the fund as well as from "beneficiaries" by current and former trustees or purported trustees."

I am the authorised decision-maker for the purposes of section 23 of the FOI Act.

I have identified the documents which come within the terms of your request. These are listed in the Schedule to this letter.

Section 47F – Public interest conditional exemptions – personal privacy

Section 47F provides as relevant as follows:

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency ... must have regard to the following matters:
 - (a) The extent to which the information is well known;

- (b) Whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- (c) The availability of the information from publicly accessible sources;
- (d) Any other matters that the agency ... considers relevant.

Section 4(1) provides that the term “personal information” means “information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion”.

The Australian Information Commissioner's Guidelines (**IC Guidelines**) state that for information or opinion to be personal information, the individual's identity needs to be apparent, or reasonably ascertainable [para 6.118].

Documents 1-18 contain the names, contact details and/or employment details of various third parties. I am satisfied that this information is personal information.

In relation to the concept of “unreasonable disclosure” the IC Guidelines state at paragraph 6.127 that the personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of “unreasonableness” implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not amount to the public interest test of section 11A(5) of the FOI Act, which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest test.

The IC Guidelines at paragraph 6.131 identify the following four factors for determining whether disclosure is unreasonable in all the circumstances:

- (a) the author of the document is identifiable
- (b) the documents contain third party personal information
- (c) release of the documents would cause stress on the third party
- (d) no public purpose would be achieved through release.

Other factors identified in the IC Guidelines as relevant include:

- The nature of the information, that is, whether it is common or disclosure would result in serious consequences;
- How the information was obtained, that is, covertly, in confidence or using information gathering powers;
- The current relevance or age of the information;
- Whether it would shed light on the workings of government;

[para 6.132]

The FOI applicant seeks copies of correspondence between ASIC and Senator Williams in relation to the administration of the Fund and the concealment of deeds of the Fund. There is nothing before me to indicate that the information in the documents is well known. In these circumstances I consider that disclosure of the

personal information in documents 1 to 18 would involve unreasonable disclosure and I find that this information is conditionally exempt pursuant to section 47F.

Public interest

Under the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest. I have considered the following factors outlined in subsection 11B(3) favouring access to the document in the public interest:

1. Access to the documents would promote the objects of the FOI Act (including all matters set out in sections 3 and 3A).

I have considered the matters outlined in sections 3 and 3A which state that the FOI Act promotes disclosure of documents held by the Government of the Commonwealth.

2. Access to the documents would inform debate on a matter of public importance.

I do not consider that the release of the documents would inform debate on a matter of public importance.

3. Access to the documents would promote effective oversight of public expenditure.

I do not consider that disclosure of the documents would promote effective oversight of public expenditure.

4. Access to the documents would allow a person to access his or her personal information.

There is no personal information relevant to you contained in the documents.

While the FOI Act does not list any factors weighing against disclosure, a non-exhaustive list of these factors is set out at paragraph 6.29 of the IC Guidelines. I consider that release of the documents could reasonably be expected to prejudice or impede:

- the protection of an individual's right to privacy
- the flow of information to ASIC
- ASIC's ability to obtain confidential information
- ASIC's ability to obtain similar information in the future

In weighing the factors for and against disclosure I consider that the balance falls against disclosure of the conditionally exempt documents. In my view any benefit you may derive from being given the documents is outweighed by the adverse effects to the privacy of the individuals named in the documents.

For the above reasons I am satisfied that the documents are exempt under section 47F(1) and that disclosure would be contrary to the public interest.

Section 22

Section 22 of the FOI Act provides that where an agency or Minister decides not to grant access to a document on the grounds that it is an exempt document or that to grant access to a document would disclose information that would reasonably be regarded as irrelevant to the request; and, "it is possible for the agency....to make a copy of the document with such deletions that the copywould not be an exempt document; and ..would not disclose such information....and it is reasonably practical for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and resources available for the work, to make such a copy...the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make and grant access to such a copy".

Decision

I advise that I have decided not to release the documents marked "Exempt" in the attached Schedule, under your request, on the grounds that the documents are exempt from release for the following reasons:

- all of the documents contain personal information about individuals that is not well known,
- the individuals named in the documents are not known to be associated with the matters referred to in the documents,
- the documents contain third party personal information,
- release of the documents would cause stress on the third party, and
- no public purpose would be achieved through release.

I have considered whether, pursuant to section 22 of the FOI Act, access should be granted to part of the aforementioned exempt documents. For the reasons above, explaining the basis of the exemptions applied in respect to the documents, I find that the documents are "exempt documents" as defined by the FOI Act. I further find that it would not be possible to make a copy of the documents with such deletions that the documents would not be exempt documents.

In reaching my decision I have also considered the views contained in submissions made by an affected party.

Review Rights

In the event that you are dissatisfied with the decision:

1. You may, within 30 days after the day on which you have been notified of this decision, apply in writing to ASIC for a review of my decision by another ASIC officer under section 54B of the FOI Act. This request should be addressed to me or to the Senior Manager, Administrative Law GPO Box 9827 SYDNEY or by email to foirequest@asic.gov.au

2. You may within 60 days after the day on which you have been notified of this decision, apply in writing to the Office of the Australian Information Commissioner (OAIC) for a review of my decision under section 54N of the FOI Act. You may contact the OAIC by post at GPO Box 5218 Sydney NSW 2001, by email at enquiries@oaic.gov.au or by telephone on 1300 363 992

Right to complain

3. You may lodge a complaint with the OAIC in relation to the conduct of ASIC in the handling of this request. You may contact the OAIC as described above.

Yours faithfully



Therese Brabet
(Authorised decision-maker under subsection 23(1) of the FOI Act)
for the Australian Securities and Investments Commission

SCHEDULE OF DOCUMENTS

No	Description of document	Date	No of folios	Decision on access	Relevant section
1.	Email from Senator Williams' office to ASIC forwarding a complaint from a constituent	18.7.13	2	Exempt	s47F
2.	Email from ASIC to Senator Williams' office	25.7.13	1	Exempt	s47F
3.	Email from Senator Williams' office to ASIC	26.7.13	1	Exempt	s47F
4.	Letter from ASIC to Senator Williams in response to the complaint raised at item 1	6.8.13	1	Exempt	s47F
5.	Email from Senator Williams' office to ASIC attaching a complaint from a constituent addressed to ASIC, cc'ing Senator Williams	6.1.14	2	Exempt	s47F
6.	First attachment to email at item 5 – Letter to ASIC from complainant/constituent	12.12.13	2	Exempt	s47F
7.	Second attachment to email at item 5 – Letter to complainant/constituent from ASIC	10.12.13	1	Exempt	s47F
8.	Letter from ASIC to Senator Williams in response to the complaint raised at item 5	17.1.14	3	Exempt	s47F
9.	Email from Senator Williams' office to ASIC forwarding an email complaint from a constituent	28.1.14	2	Exempt	s47F
10.	First attachment to email at item 9 – Letter to Senator Williams	27.1.14	2	Exempt	s47F
11.	Second attachment to email at item 9 – Response from the trustee of the AusBev Superannuation Fund to the constituent	undated	2	Exempt	s47F
12.	Third attachment to email at item 9 – Letter from AusBev Super to the constituent	4.10.13	1	Exempt	s47F
13.	Fourth attachment to email at item 9 – Letter from ASIC to constituent	3.10.13	1	Exempt	s47F
14.	Letter from ASIC to Senator Williams	11.2.14	3	Exempt	s47F
15.	Email from Senator Williams' office to ASIC forwarding a response from a constituent to ASIC's letter to Senator Williams (item 14)	17.2.14	2	Exempt	s47F
16.	First attachment to email at item 14 – Letter from constituent to Senator Williams	16.2.14	6	Exempt	s47F
17.	Second attachment to email at item 14 – letter from AusBev Super to constituent	30.12.13	1	Exempt	s47F
18.	Letter from ASIC to Senator Williams	3.3.14	2	Exempt	s47F