

**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: Ben Fairless

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 APRA's current FOI delegations

My decision: Grant access, under section 11A(3) of the FOI Act, to the document specified in the Applicant's request

MATERIAL FACTS

1. I refer to your email dated 2 November 2016, in which you sought access under the FOI Act to:

“Can I please have a copy of the current FOI Delegations, and any related directions issued in respect of FOI”

(your FOI Request).
2. By email dated 8 November 2016, APRA acknowledged receipt of your request.
3. In making your request, you asked for release of the FOI Delegations administratively or under the Information Publication Scheme (IPS) as you believed it could be classified as ‘operational information’.
4. Section 8A(1) of the FOI Act defines operational information as “information held by the agency to assist the agency to perform or exercise the agency’s functions or powers in making decisions or recommendations affecting members of the public (or any particular person or entity, or class of persons or entities).” Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines) clarify that operational information does not encompass all government decision making that directly or indirectly affects the public. Specifically, decisions occurring within government about legislation, and case management procedures for recording the making of a decision do not constitute operational information under the FOI Act (FOI Guidelines, [13.98]).
5. The current FOI Delegations assist APRA staff to make decisions in accordance with the FOI Act and structure the decision-making process. Accordingly, I have processed your request for information as an FOI request as APRA is not required to release its FOI Delegations as operational information under the IPS.
6. An extract of section 8A of the FOI Act is attached to these reasons. A copy of the FOI Guidelines can be accessed through the Office of the Australian Information Commissioner website at the following address: <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

EVIDENCE AND MATERIAL RELIED ON

7. In making my decision, I have relied on the following evidence and material:
 - a) the Applicant's request received by APRA on 2 November 2016;
 - b) email correspondence between Senior Manager, Legal and General Counsel on 3 November 2016;
 - c) acknowledgment email from FOI Officer to the Applicant dated 8 November 2016;
 - d) relevant sections of the *Australian Prudential Regulation Authority Act 1998* (Cth) (APRA Act);
 - e) relevant sections of the FOI Act; and
 - f) relevant extracts of the FOI Guidelines.

REASONS FOR DECISION

8. APRA has conducted reasonable searches of its records to locate the FOI Delegations and any related directions issued in respect of FOI. APRA has identified a document headed Instrument of Delegation, Functions and powers under the FOI Act and FOI Regulations dated 19 April 2012. APRA has not issued any related directions in respect of FOI.
9. I have decided to grant access to the document referred to above under section 11A(3) of the FOI Act. The document will be published on APRA's Disclosure Log within ten working days as required under sections 8(2)(g) and 11C(6) of the FOI Act.

ADVICE TO APPLICANT AS TO RIGHTS OF REVIEW

Application for Internal Review of Decision

10. 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.
11. 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.
12. 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).
13. 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.

14. 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*

15. 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

16. 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.
17. 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.
18. An application for review by the Information Commissioner should be sent:
- Online: www.oaic.gov.au
 - Post: GPO Box 5218, Sydney NSW 2001
 - Fax: +61 2 9284 9666
 - Email: enquiries@oaic.gov.au
 - In person:
*Level 3, 175 Pitt St,
Sydney, NSW*

Application for review by Administrative Appeals Tribunal

19. 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.
20. 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

21. 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.
22. 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:

18.11.16

FREEDOM OF INFORMATION ACT 1982

8 Information to be published—what information?

Agency plans

- (1) An agency must prepare a plan showing the following:
 - (a) what information the agency proposes to publish for the purposes of this Part;
 - (b) how, and to whom, the agency proposes to publish information for the purposes of this Part;
 - (c) how the agency otherwise proposes to comply with this Part.

Information that must be published

- (2) The agency must publish the following information:
 - (a) the plan prepared under subsection (1);
 - (b) details of the structure of the agency's organisation (for example, in the form of an organisation chart);
 - (c) as far as practicable, details of the functions of the agency, including its decision-making powers and other powers affecting members of the public (or any particular person or entity, or class of persons or entities);
 - (d) details of the following appointments:
 - (i) appointments of officers of the agency that are made under Acts (other than APS employees within the meaning of the *Public Service Act 1999*);
 - (ii) appointments of officers of the agency that are made under Norfolk Island enactments (other than officers appointed or employed under the *Public Service Act 2014* of Norfolk Island);
 - (e) the information in annual reports prepared by the agency that are laid before the Parliament;
 - (f) details of arrangements for members of the public to comment on specific policy proposals for which the agency is responsible, including how (and to whom) those comments may be made;
 - (g) information in documents to which the agency routinely gives access in response to requests under Part III (access to documents), except information of the following kinds:
 - (i) personal information about any individual, if it would be unreasonable to publish the information;
 - (ii) information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;
 - (iii) other information of a kind determined by the Information Commissioner under subsection (3), if it would be unreasonable to publish the information;
 - (h) information held by the agency that is routinely provided to the Parliament in response to requests and orders from the Parliament;
 - (i) contact details for an officer (or officers) who can be contacted about access to the agency's information or documents under this Act;
 - (j) the agency's operational information (see section 8A).

Note: If operational information is not published in accordance with this section, a person must not be subjected to any prejudice as a result (see section 10).

- (3) The Information Commissioner may, by legislative instrument, make a determination for the purposes of subparagraph (2)(g)(iii).

Other information

- (4) The agency may publish other information held by the agency.

Functions and powers

- (5) This section applies to a function or power of an agency whether or not the agency has the function or power under an enactment.

Definition

- (6) In this section:

enactment includes a Norfolk Island enactment.

Note 1: See section 8C for restrictions on the requirement to publish this information.

Note 2: The agency must have regard to the objects of this Act and guidelines issued by the Information Commissioner in performing functions, and exercising powers, under this section (see section 9A).

8A Information to be published—what is *operational information*?

- (1) An agency's ***operational information*** is information held by the agency to assist the agency to perform or exercise the agency's functions or powers in making decisions or recommendations affecting members of the public (or any particular person or entity, or class of persons or entities).

Example: The agency's rules, guidelines, practices and precedents relating to those decisions and recommendations.

- (2) An agency's ***operational information*** does not include information that is available to members of the public otherwise than by being published by (or on behalf of) the agency

11A Access to documents on request

Scope

- (1) This section applies if:
- (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of *exempt document* in subsection 4(1).

11C Publication of information in accessed documents

Scope

- (1) This section applies to information if an agency or Minister gives a person access to a document under section 11A containing the information, except in the case of any of the following:
- (a) personal information about any person, if it would be unreasonable to publish the information;
 - (b) information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;
 - (c) other information of a kind determined by the Information Commissioner under subsection (2), if it would be unreasonable to publish the information;
 - (d) any information, if it is not reasonably practicable to publish the information under this section because of the extent of any modifications to a document (or documents) necessary to delete information mentioned in paragraphs (a) to (c).
- (2) The Information Commissioner may, by legislative instrument, make a determination for the purposes of paragraph (1)(c).

Publication

- (3) The agency, or the Minister, must publish the information to members of the public generally on a website by:
 - (a) making the information available for downloading from the website; or
 - (b) publishing on the website a link to another website, from which the information can be downloaded; or
 - (c) publishing on the website other details of how the information may be obtained.
- (4) The agency may impose a charge on a person for accessing the information only if:
 - (a) the person does not directly access the information by downloading it from the website (or another website); and
 - (b) the charge is to reimburse the agency for a specific reproduction cost, or other specific incidental costs, incurred in giving the person access to that particular information.
- (5) If there is a charge for accessing the information, the agency or Minister must publish details of the charge in the same way as the information is published under this section.

Time limit for publication

- (6) The agency or Minister must comply with this section within 10 working days after the day the person is given access to the document.
- (7) In this section:

working day means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in the place where the function of publishing the information under this section is to be performed.