

**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:** Laurence Davison
- Decision-maker:** Sigrid Neumueller, 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 methodology used to determine what assets qualify as high-quality liquid assets.
- My decision:** *Refuse access*, under section 47C of the FOI Act, to the document specified in the Applicant's request because the document contains deliberative matter.

## MATERIAL FACTS

1. I refer to your email dated 9 February 2017, in which you sought access under the FOI Act to:

*"When determining what asset classes qualify as high-quality liquid assets in Australia, APRA said in 2011 that it "has taken into account the amount of the instrument on issue, the degree to which the instrument is broadly or narrowly held, and the degree to which the instrument is traded in large, deep and active markets".*

*Can you please release documentation relating to the methodology used to make this determination, including for instance:*

- Correspondence with banks and any other market participants (eg the ASX, trustees) around trading volume of assets in the open market.*
- Other data available to APRA demonstrating that an asset class is or is not traded in "large, deep and active markets".*
- Documentation available to APRA demonstrating "the degree to which the instrument is broadly or narrowly held".*

(your FOI Request).

2. By email dated 14 February 2017, APRA acknowledged receipt of your FOI 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 9 February 2017;
  - b) acknowledgment email from FOI Officer to the Applicant dated 14 February 2017;
  - c) email correspondence between Paralegal, Legal and Head of Liquidity Risk between 13-20 February 2017;

- d) email correspondence between Paralegal, Legal and Risk Specialist Liquidity Risk between 24 February - 13 March 2017;
- e) relevant sections of the *Australian Prudential Regulation Authority Act 1998* (Cth) (APRA Act);
- f) relevant sections of the FOI Act; and
- g) guidelines issued by the Office of the Australian Information Commissioner to date (FOI Guidelines).

## DECISION

- 4. APRA has conducted all reasonable searches of its records and identified one document as being relevant to your FOI request (the Document).
- 5. I have decided to refuse access to the Document under section 47C of the FOI Act as it contains deliberative matter.

## REASONS FOR DECISION

### Deliberative Processes

- 6. I have taken the following approach to the application of section 47C of the FOI Act:
  - a. under section 47C of the FOI Act, a document may be conditionally exempt if it includes deliberative matter;
  - b. 'deliberative matter' is content that is in the nature of, or relating to either:
    - i. opinion, advice or recommendation obtained, prepared or recorded; or
    - ii. a consultation or deliberation that has taken place;in the course of, or for the purpose of, a deliberative process of APRA (section 47C(1)(a));
  - c. a deliberative process "involves the exercise of judgement in developing and making a selection from different options" (FOI Guidelines [6.62]);
  - d. a deliberative process may include the recording or exchange of:
    - i. opinions;
    - ii. advice;
    - iii. recommendations;
    - iv. a collection of factors or opinions including the pattern of facts or opinions considered; and
    - v. interim decisions or deliberations (FOI Guidelines [6.64]).

- e. the Document records deliberative processes, in terms of APRA's thinking processes and views on proposals or courses of action;
- f. the Document is therefore conditionally exempt under section 47C of the FOI Act.

### **Public Interest Test**

- 7. Section 11A(5) of the FOI Act requires APRA to provide access to conditionally exempt documents unless (in the circumstances) access at the time would, on balance, be contrary to the public interest.
- 8. I have reviewed the FOI Guidelines and consider that the following public interest factor favouring release would apply, as disclosure would or could reasonably be expected to promote the objects of the FOI Act.
- 9. I have considered the other three factors favouring access set out in section 11B(3) of the FOI Act. None of the three factors are relevant.
- 10. However I have also considered the following public interest factors against release would apply, as disclosure would or could reasonably be expected to:
  - a. inhibit frankness and candour in the exchange of ideas and opinions within APRA for the purpose of preparing internal Management Group Reports and other similar documents;
  - b. inhibit frankness and candour in deliberations, making recommendations and considering courses of action within APRA; and
  - c. prejudice the management function of APRA.
- 11. I am satisfied that disclosure of the Document would, on balance, be contrary to the public interest. I have decided to refuse access to the Document under section 47C of the FOI Act as, in the circumstances, the public interest favours exemption rather than disclosure.
- 12. Extracts of sections 11A, 11B and 47C of the FOI Act are attached to these reasons.

### **ADVICE TO APPLICANT AS TO RIGHTS OF REVIEW**

#### ***Application for Internal Review of Decision***

- 13. 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.
- 14. 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.
- 15. 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).

16. 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.

17. 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*

18. 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***

19. 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.

20. 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.

21. An application for review by the Information Commissioner should be sent:

- Online: [www.oaic.gov.au](http://www.oaic.gov.au)
- Post: GPO Box 5218, Sydney NSW 2001
- Fax: +61 2 9284 9666
- Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)
- In person:  
*Level 3, 175 Pitt St,  
Sydney, NSW*

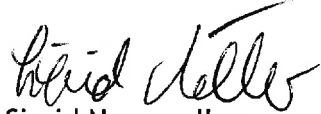
#### ***Application for review by Administrative Appeals Tribunal***

22. 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.

23. 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***

24. 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.
25. 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.



Sigrid Neumueller

FOI Officer

Australian Prudential Regulation Authority

Date: 13/3/2017

## FREEDOM OF INFORMATION ACT 1982 (CTH)

### 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).

## 11B Public interest exemptions—factors

### *Scope*

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

### *Factors favouring access*

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
  - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
  - (b) inform debate on a matter of public importance;
  - (c) promote effective oversight of public expenditure;
  - (d) allow a person to access his or her own personal information.

### *Irrelevant factors*

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
  - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
  - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
  - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
  - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
  - (d) access to the document could result in confusion or unnecessary debate.

### *Guidelines*

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

## 47C Public interest conditional exemptions—deliberative processes

### *General rule*

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
  - (a) an agency; or
  - (b) a Minister; or
  - (c) the Government of the Commonwealth; or
  - (d) the Government of Norfolk Island.

*Exceptions*

(2) Deliberative matter does not include either of the following:

- (a) operational information (see section 8A);
- (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
- (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
- (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).