



**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 from APRA to Corporate Combined Superannuation Pty Ltd that notes the registration of a superannuation fund with registration number R1004830.
My decision:	Grant access, to the document subject to redaction for personal privacy under section 47F of the FOI Act.

MATERIAL FACTS

1. I refer to your email dated 2 April 2017, in which you sought access under the FOI Act to the following information:

"I refer to a letter dated 16 March 2006 to Mr Julian Marks, Manager - South West Region APRA, from the trustee Corporate Combined Superannuation Pty Ltd {RSE Licence L000758 signed by Nicholas D J Brookes.

The letter was seeking registration of a superannuation Fund.

APRA then granted registration number R1004830 having received this letter with attached fund documents.

The document I seek is a copy of the letter sent by APRA to Corporate Combined Superannuation Pty Ltd advising that APRA had granted registration of this fund and advised that the registration number was R1004830."

(your FOI request).

2. By email dated 6 April 2017, 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 2 April 2017;
 - b) acknowledgment email from FOI Officer to the Applicant dated 6 April 2017;

- c) email correspondence between Paralegal, Legal and Manager Supervision Team between 13-28 April 2017;
- 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 to date (FOI Guidelines).

REASONS FOR DECISION

- 4. APRA has identified the document specified in your FOI request.
- 5. I have decided to *grant access* to the document subject to the deletion of names for personal privacy in section 47F of the FOI Act.

Personal Information

- 6. I have taken the following approach in relation to the application of section 47F of the FOI Act:
 - a. under section 47F(1) of the FOI Act, a document may be conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person;
 - b. personal information includes information about an identified or reasonably identifiable person that says something about the person (FOI Guidelines [6.129]);
 - c. the redacted information is third party personal information of an individual and a former APRA employee;
 - d. the applicant has access to the general enquiry number and/or email address of APRA and any enquiry can be directed to the appropriate officers without disturbing staff unnecessarily (*Bartucciottto and Commonwealth Ombudsman* [2005] AATA 1109);
 - e. disclosure of the information would be unreasonable under section 47F(2) of the FOI Act as:
 - a) the personal information contained in the document includes that of a former employee not known to be associated with the matters dealt with in the document;
 - b) the redacted information is not otherwise publicly available or well-known; and/or
 - c) the information does not concern the Applicant and is irrelevant to the FOI Request.

Public Interest Test

7. Section 11A(5) of the FOI Act requires APRA to provide access to conditionally exempt material 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 disclosure would or could reasonably be expected to promote the objects of the FOI Act.
9. I consider that the following public interest factors against disclosure are relevant as disclosure would or could reasonably be expected to prejudice an individual's right to privacy because:
 - a. the redacted information includes information related to a former employee whose identity and/or role at APRA are not generally publicly available or otherwise well-known;
 - b. it unnecessarily exposes APRA employees to adverse publicity; and
 - c. the disclosure of redacted information serves no public purpose.
10. I am satisfied that, on balance, disclosure of the redacted information in the document would be contrary to the public interest. As outlined above, I consider it appropriate to grant access to the document subject to the redaction of the personal information of two individuals as it is exempt material under section 47F of the FOI Act.
11. Extracts of sections 11A, 11B and 47F are attached for your information.

ADVICE TO APPLICANT AS TO RIGHTS OF REVIEW

Application for Internal Review of Decision

12. 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.
13. 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.
14. 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).
15. 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.
16. 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

17. 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

18. 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.
19. 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.
20. 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
 - Phone: 1300 363 992
 - Email: enquiries@oaic.gov.au
 - In person:
Level 3, 175 Pitt Street
Sydney, NSW

Application for review by Administrative Appeals Tribunal

21. 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.
22. 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

23. 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.

24. 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:

28.4.17

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;
 - (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.

47F Public interest conditional exemptions—personal privacy

General rule

- (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 or Minister 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 or Minister considers relevant.

- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
- (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
- (a) carries on the same occupation, of a kind mentioned in the definition of **qualified person** in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

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

Australian Prudential Regulation Authority

400 George Street (Level 26)
Sydney NSW 2000
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Sydney NSW 2001

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F 02 9210 3411
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APRA

20 April 2006

The Directors
Corporate Combined Superannuation Pty Ltd

Level 3, 179 Queen St
Melbourne, VIC 3000

Dear [REDACTED]

I refer to Corporate Combined Superannuation Pty Ltd application dated 03 April 2006, for registration of Foster's Group Superannuation Fund (the entity) pursuant to section 29L of the *Superannuation Industry Supervision Act 1993* (the Act), (the Application).

Pursuant to section 29M of the Act, I have decided to register Foster's Group Superannuation Fund. A copy of the Decision to register a registrable superannuation entity, made on 20 April 2006 is attached.

The registration number for Foster's Group Superannuation Fund is R1004830.

Subsection 29MB(1) of the Act, requires that the registration number must be included in each document that the RSE licensee provides to APRA that relates to the entity and on any other document in which the RSE licensee identifies itself as the RSE licensee. APRA has determined pursuant to subsection 29MB(2) of the Act, that the RSE Licensee is not required to comply with subsection 29MB(1) in respect of the documents as identified in the schedule to the decision.

Pursuant to section 29PA of the Act, an RSE licensee of a registrable superannuation entity must ensure that:

- at all times the risk management plan (RMP) for the entity is up to date; and
- the RMP is reviewed annually to ensure that it complies with section 29P of the Act; and
- the RMP is modified or replaced in accordance with section 29PB of the Act, if at any time the RSE licensee becomes aware that the RMP no longer complies with section 29P of the Act.

Under section 29PC of the Act, If an RSE licensee:

- modifies an RMP, a signed copy of the modification and a signed copy of the modified RMP;
- repeals an RMP, a signed copy of the new RMP, and a signed statement to the effect that the new RMP replaces the old RMP;

must be given to APRA within 14 days after making the modification or repealing the old plan.

A failure to comply with the requirements in section 29PC of the Act may result in the RSE licensee breaching the mandatory conditions imposed under section 29E of the Act. It is also an offence to breach the requirements of section 29PC of the Act (see subsections 29PC(4) and 29PC(5) of the Act).

If you have any concerns in respect to this letter, the Notices or attachments please contact [REDACTED] on (03) 9246 7581.

Yours faithfully



Tony Randle
General Manager
Superannuation Licensing

Tel: 9210 3007
Fax: 9210 3300
Encl (2)



Decision to register a registrable superannuation entity

Superannuation Industry (Supervision) Act 1993

TO: Corporate Combined Superannuation Pty Ltd ABN 51 104 967 964, RSE licence number L0000758 (the RSE licensee)

SINCE

- A. on 03 April 2006 the RSE licensee applied for the registration of Foster's Group Superannuation Fund SFN 154 771 940 (the entity), as a registrable superannuation entity under section 29L of the *Superannuation Industry (Supervision) Act 1993* (the Act) (the Application for Registration); and
- B. (i) the Application for Registration complies with section 29L of the Act; and
(ii) the RSE licensee has provided to APRA all information that it was requested to provide under section 29LA of the Act or the request has been disposed of; and
(iii) I am satisfied that nothing in the governing rules of the entity conflicts with Part 6 of the Act; and
(iv) I am satisfied that the risk management plan for the entity meets the requirements of section 29P of the Act; and
(v) the RSE licensee holds an RSE licence that enables it to be a trustee of the entity.

I, Tony Randle, a delegate of APRA, under subsection 29M(1) of the Act, REGISTER the entity.

The registration number for the entity is R1004830.

Dated 20 April 2006

Tony Randle

Tony Randle
General Manager
Superannuation Licensing

Interpretation

In this Notice

APRA means the Australian Prudential Regulation Authority.

registrable superannuation entity has the meaning given in subsection 10(1) of the Act.

RSE licence has the meaning given in subsection 10(1) of the Act.

RSE licensee has the meaning given in subsection 10(1) of the Act.

Note 1 Under paragraph (i) of this notice APRA has stated that the Application for Registration complies with section 29L of the Act. This statement has been made on the basis of information held by APRA. If however, since making Application for Registration to APRA the trust deed by which the entity is constituted, the governing rules of the entity, or the risk management plan for the entity has been varied or revoked and replaced, and the RSE licensee has not lodged with APRA an up-to-date copy of the relevant document, section 29L(6) may have the effect of making the Application non-complying, which may affect the validity of the registration of the entity. If these circumstances are applicable, immediately contact APRA regarding the issue and lodge the required documents.

Note 2 Under section 29MB of the Act, after the registration of a registrable superannuation entity, the RSE licensee of the entity must ensure that the entity's registration number is included in the documents specified in section 29MB, unless the RSE licensee has been given written approval by APRA not to include the number in a particular document or in a class of documents.

Note 3 Under subsection 29N(1) of the Act, APRA must cancel the registration of a registrable superannuation entity if a reporting document within the meaning of the *Financial Sector (Collection of Data) Act 2001* relating to the entity is given to APRA under that Act and states that the entity has been wound up. Under subsection 29N(2) of the Act, APRA may cancel the registration of a registrable superannuation entity if APRA is satisfied, on reasonable grounds, that the entity has no beneficiaries and no assets and that there are no outstanding claims against the entity for benefits or other payments and that any other circumstances prescribed in the Regulations made for the purposes of paragraph 29N(2)(c) exist.

Note 4 Subdivision B of Division 5 of Part 2B of the Act sets out the requirements of RSE licensees in relation to risk management plans following the registration of a registrable superannuation entity.



Approval not to include the registration number of a registrable superannuation entity on a document

Superannuation Industry (Supervision) Act 1993

TO: Corporate Combined Superannuation Pty Ltd ABN 51 104 967 964, RSE licence L0000758, (you), as trustee of a registrable superannuation entity, Foster's Group Superannuation Fund (the entity), that has been registered, registration number R1004830.

I, Tony Randle, a delegate of APRA, under subsection 29MB(2) of the Act, GIVE approval for you not to ensure that the entity's registration number R1004830 is included in the documents or class of documents specified in the Schedule attached to this Notice.

This Approval ceases on 20 April 2007.

Dated 20 April 2006


.....

Tony Randle
General Manager
Superannuation Licensing

Interpretation

In this Notice

APRA means the Australian Prudential Regulation Authority.

RSE licence has the meaning given in subsection 10(1) of the Act.

RSE licensee has the meaning given in subsection 10(1) of the Act.

registrable superannuation entity has the meaning given in subsection 10(1) of the Act.

Note 1 Under subsection 29MB(1) of the Act, after a registrable superannuation entity is registered, the RSE licensee must ensure that the entity's registration number is included in the documents specified in that subsection unless a notice has been given in relation to either a particular

document or a class of documents under subsection 29MB(2).

**Schedule - the documents in which the entity's
registration number need not be included**

- Product Disclosure Statements;
- Application Forms;
- Member statements;
- Other member communications;
- Advertising materials; and
- Websites.

