

Our ref: CRM2017/556

27 June 2017

Phillip Sweeney

Via email: [foi+request-3574-7887784@righttoknow.org.au](mailto:foi+request-3574-7887784@righttoknow.org.au)

Dear Mr Sweeney,

**Freedom of Information request**

I refer to your application dated 26 May 2017, under the *Freedom of Information Act 1982* (the Act) seeking the following:


- "(i) A letter dated 19 May 2017 to the Commissioner advising the Commissioner of the disclosure obligations of Mrs Helen Rowell, the Deputy Chairman of APRA pursuant to Section 316 of the Crimes Act 1900 (NSW); and*
- (ii) A copy of any disclosure document to the Australian Federal Police from Mrs Rowell disclosing evidence related to the alleged contraventions of Section 136.1, 137.1 and/or 137.2 of the Criminal Code Act 1996 (Cth)."*

Attached at Annexure A to this letter is my decision and statement of reasons for that decision. A "Schedule of Documents" identified as falling into the scope of your request is at Annexure B.

**Information Publication Scheme (IPS)**

As notified to you on 26 May 2017 and in accordance with section 11C of the Act, it has been decided not to publish the documents in respect of your request.

Yours sincerely



Wendy Downing  
Acting Coordinator  
Freedom of Information  
Australian Federal Police

## **STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY Phillip SWEENEY**

I, Wendy Downing, Acting Coordinator, Freedom of Information Team, am an officer authorised under section 23 of the Act to make decisions in relation to the Australian Federal Police.

What follows is my decision and reasons for the decision in relation to your application.

### **BACKGROUND**

On 26 May 2017, this office received your application in which you requested:

*"(i) A letter dated 19 May 2017 to the Commissioner advising the Commissioner of the disclosure obligations of Mrs Helen Rowell, the Deputy Chairman of APRA pursuant to Section 316 of the Crimes Act 1900 (NSW); and  
(ii) A copy of any disclosure document to the Australian Federal Police from Mrs Rowell disclosing evidence related to the alleged contraventions of Section 136.1, 137.1 and/or 137.2 of the Criminal Code Act 1996 (Cth)."*

### **SEARCHES**

In relation to this request, the following searches for documents have been undertaken:

- a) a search of all records held by AFP Commissioner's office relating to the documents to which you sought access; and
- b) a search of all records held by the relevant line areas within the AFP.

### **DECISION**

I have identified one document relevant to your request. A schedule of the document and details of my decision in relation to the document is at Annexure B.

I have decided that the documents itemised at Annexure B are released to you in its entirety.

Further, given that the request has totalled only three pages and was not a complex request to process, I am waiving any further fees and charges which are normally associated with the processing of applications under the Act.

### **EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED**

In reaching my decision, I have relied on the following documentary evidence:

- ❖ the scope of your application;

- ❖ the contents of the documents listed in the attached schedule;
- ❖ advice from AFP officers with responsibility for matters relating to the documents to which you sought access;
- ❖ *Freedom of Information Act 1982*;
- ❖ Guidance material issued by the Department of Prime Minister and Cabinet; and
- ❖ Guidelines issued by the Office of the Australian Information Commissioner.

## **REVIEW RIGHTS**

If you are dissatisfied with this decision you can apply for internal or Information Commissioner (IC) Review. You do not have to apply for Internal Review before seeking IC review.

### ***REVIEW RIGHTS under Part VI of the Act: Internal Review by the AFP***

Section 53A of the Act gives you the right to apply for an internal review in writing to this Department within 30 days of being notified of this decision.

No particular form is required but it would assist the decision-maker were you to set out in the application, the grounds on which you consider that the decision should be reviewed.

Applications for a review of the decision should be addressed to:

Freedom of Information Team  
Australian Federal Police  
GPO Box 401  
Canberra ACT 2601

### ***REVIEW RIGHTS under Part VII of the Act: Review by the Information Commissioner (IC)***

Alternatively, Section 54L of the Act gives you the right to apply directly to the IC or following an internal review by the AFP. In making your application you will need to provide an address for notices to be sent (this can be an email address) and a copy of the AFP decision. It would also help if you set out the reasons for review in your application.

Section 54S of the Act provides for the timeframes for an IC review submission. For an *access refusal decision* covered by subsection 54L(2), the application must be made within 60 days. For an *access grant decision* covered by subsection 54M(2), the application must be made within 30 days.

Applications for a review of the decision should be addressed to:

Office of the Australian Information Commissioner  
GPO Box 5218  
Sydney NSW 2001

### ***Right to Complain***

Section 70 of the Act provides that a person may complain to the IC about action taken by this Department in relation to your application.

A complaint to the IC may be made in writing and identify the agency against which the complaint is made.

The IC may be contacted on 1300 363 992. There is no particular form required to make a complaint, but the complaint should set out the grounds on which you consider the action should be investigated.

SCHEDULE OF DECISION – CRM 2017/556  
RELEASE OF DOCUMENTS – Phillip Sweeney (Right to Know)

Document No	Folio No	Date	Author	Description	Exemption	Reason
1	1-3	19 May 2017	Phillip Sweeney	Letter	Released in full	documents authored by applicant.

Authorised Decision Maker: Wendy Downing  
Acting Coordinator  
Freedom of Information  
Australian Federal Police

Date of Decision: 27 June 2017

19 May 2017

12 Highland Way

Highton, 3216

Attn: Commissioner Andrew Colvin APM OA

**Australian Federal Police**

GPO Box 401,

Canberra ACT 2601

[commissioner@afp.gov.au](mailto:commissioner@afp.gov.au)

Dear Commissioner

## Re: Section 316 Disclosure Obligation

Firstly the **Australian Federal Police** are to be congratulated on their investigation into the Tax Office fraud where charges have also been laid against ATO Deputy Commissioner Michael Cranston.

It would appear from media reports that the Deputy Commissioner was "**running protection**" for someone else and did not himself benefit financially from the fraud. This was an abuse of public office.

The Prime Minister Malcolm Turnbull has made the following statement in response to the disclosure of the fraud:

"Nobody should imagine they can escape our law-enforcement agencies no matter how high they may be in a government department" He said.

"No matter how high they may be, they are being watched. We have zero tolerance for this type of conspiracy, this type of fraud, this type of abuse of public office.

We have a relentless pursuit of corruption, malpractice, abuse of office, the AFP have a very keen focus on it...as has been demonstrated."

Given these statements by the Prime Minister this letter is a foreshadowing letter to advise the Commissioner to expect a disclosure pursuant to **Section 316** of the **Crimes Act 1900** (NSW) {**Appendix A**} from Mrs Helen Rowell the Deputy Chairman of **APRA**.

The head office of **APRA** is in Sydney and Mrs Rowell is subject to the laws of NSW as well as Commonwealth laws.

Mrs Rowell is privy to information concerning the contravention of the following Commonwealth offences under the **Criminal Code Act 1995** (Cth):

- (i) 136.1 False or misleading statements in applications

- (ii) 137.1 False or misleading information
- (iii) 137.2 False or misleading documents

The offences were committed in 2006 during the registration of a superannuation scheme pursuant to **Section 29L** of the *Superannuation Industry (Supervision) Act 1993*.

The name of the offender will be provided to the **APF** in the **Section 316** disclosure that must be made by Mrs Rowell so as not to be "*running protection*" for another party, even though Mrs Rowell has received no personal benefit in this particular fraud.

Mrs Rowell will also be able to provide a copy of letters dated 16 March 2006 and 29 March 2006 bearing the signature of the offender along with a copy of a purported "*Deed*" dated 26 August 1986 that was misrepresented to **APRA** as the "*Trust Deed*" of this scheme.

The genuine Trust Deed is dated 23 December 1913. This Deed was criminally concealed from **APRA**.

The "*false and misleading*" document dated 26 August 1986, bears the signature of a former company director who was once described on the front page of *The Canberra Times* as a "*self-confessed fraudster and liar*".

This document is easily proven to be fraudulent since the wrong parties executed the document.

This becomes evident once one inspects a transcript of the original Trust Deed which was drafted by Sir John Downer a former Attorney-General of South Australia and twice elected Premier.

Sir John also co-drafted the *Commonwealth of Australia Constitution Act*.

This transcript was obtained with the assistance of the current Attorney-General of South Australia (and Deputy Premier) the Hon John Rau MP and his Department.

By making this disclosure of information and evidence to the **AFP**, Mrs Rowell will be complying with her statutory duty pursuant to the *Crimes Act 1900* (NSW).

A failure to make this disclosure may find Mrs Rowell in the same predicament as the Deputy Commissioner of the Australia Tax Office.

Yours Sincerely

Phillip Sweeney

Cc

Mrs Helen Rowell – Deputy Chairman **APRA**

# Appendix A

## CRIMES ACT 1900 (NSW) - SECT 316

### *316 Concealing serious indictable offence*

(1) If a person has committed a serious indictable offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority, that other person is liable to imprisonment for 2 years.

Document has been de-classified and  
released under the Freedom of  
Information Act 1982 by the  
Australian Federal Police.