

**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:** Philip 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 letter sent to industry superannuation funds requesting information on funding of the ‘fox in the hen house’ advertisements currently being shown on television.
- My decision:** *Refuse access*, under section 24A(1) of the FOI Act, to the document specified in the Applicant’s request because the document does not exist.

**MATERIAL FACTS**

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

*“Media reports have stated that APRA recently sent letters to 15 Industry Superannuation Funds requesting information on funding of the “Fox in the hen house ads” currently being run on television.*

*The document I seek is a copy of one of these letters.”*

(your **FOI Request**).

2. By email dated 8 June 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 1 June 2017;
  - b) email correspondence between Principal Analyst, Specialised Institutions Division, Manager Supervision Team, Senior Manager South West Region and Paralegal, Legal on 1-2 June 2017;
  - c) email correspondence between Paralegal, Legal and Principal Analyst, Specialised Institutions Division on 2 June 2017;
  - d) acknowledgment email from FOI Officer to the Applicant dated 8 June 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**).

## **REASONS FOR DECISION**

- 4. APRA has conducted all reasonable searches of its records to identify the document subject of your request. However these searches have not identified any relevant documents.
- 5. Based on the information before me, I am satisfied that the requested document does not exist. Accordingly, I have refused access under section 24A(1) of the FOI Act. An extract of section 24A is attached for your information.

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

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

- 6. 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.
- 7. 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.
- 8. 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).
- 9. 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.
- 10. 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*

- 11. 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***

- 12. 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.

13. 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.
14. 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***

15. 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.
16. 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***

17. 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.
18. 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: 29 June 2017

## **FREEDOM OF INFORMATION ACT 1982 (CTH)**

### **24A Requests may be refused if documents cannot be found, do not exist or have not been received**

#### *Document lost or non-existent*

- (1) An agency or Minister may refuse a request for access to a document if:
  - (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.

#### *Document not received as required by contract*

- (2) An agency may refuse a request for access to a document if:
  - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
  - (b) the agency has not received the document; and
  - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.