

**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 the founding Trust Deed of the NSW Bookmakers' Super Fund and all amending Deeds until registration.

**My decision:** *Grant access*, under section 11 of the FOI Act, to the document specified in the Applicant's request because no exemptions apply to the documents.

**MATERIAL FACTS**

1. I refer to your email dated 5 December 2017, in which you sought access under the FOI Act to:

*"a copy of the founding Trust Deed of [The NSW Bookmakers' Super Fund] and copies of all amending Deeds executed up until the time of fund registration (around 2006)."*

(your **FOI request**).

2. On 12 December 2017, APRA acknowledged receipt of your request.

**DOCUMENTS RELATING TO THIRD PARTIES**

3. The Applicant's request is for documents that contain information relating to the business affairs of the APRA-regulated entity The NSW Bookmakers' Super Fund. Therefore, APRA extended the statutory timeline until 5 February 2017 under section 27 of the FOI Act.

**EVIDENCE AND MATERIAL RELIED ON**

4. In making my decision, I have relied on the following evidence and material:
  - a) the Applicant's request received by APRA on 5 December 2017;
  - b) acknowledgment of FOI request from FOI Officer to the Applicant dated 12 December 2017;
  - c) email correspondence between APRA's FOI officer and other APRA officers in December 2017 and January 2018;
  - d) email correspondence between Supervision Analyst and the Trustee for The NSW Bookmakers' Super Fund dated 15 January 2018;

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- 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

- 5. APRA has conducted all reasonable searches of its records and identified all relevant documents in response to your FOI request (**relevant documents**).
- 6. I have decided to grant access to the relevant documents because no exemptions or conditional exemptions apply.

### Business documents exemption

- 7. I have taken the following approach in relation to the application of section 47G of the FOI Act:
  - a) Section 47G of the FOI Act provides a conditional exemption for documents containing business information the disclosure of which would unreasonably affects the lawful business, commercial or financial affairs of The NSW Bookmakers' Super Fund.
  - b) I consulted with the Trustee of The NSW Bookmakers' Super Fund, who confirmed that the disclosure of the relevant documents would not unreasonably affect the organisation's business, commercial or financial affairs.
- 8. I am satisfied that the relevant documents do not fall under the business documents exemption, and that no other exemptions apply.
- 9. A list of the relevant documents is set out in the attached **Schedule**.

### 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](http://www.oaic.gov.au)
  - Post: GPO Box 5218, Sydney NSW 2000
  - Phone: 1300 363 992
  - Fax: +61 2 9284 9666
  - Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)
  - In person:  
Level 3, 175 Pitt Street,  
Sydney, NSW 2000

***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.

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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:

## **FREEDOM OF INFORMATION ACT 1982**

### **11 Right of access**

(1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:

- (a) a document of an agency, other than an exempt document; or
- (b) an official document of a Minister, other than an exempt document.

(2) Subject to this Act, a person's right of access is not affected by:

- (a) any reasons the person gives for seeking access; or
- (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

## **FREEDOM OF INFORMATION ACT 1982**

### **47G Public interest conditional exemptions--business**

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

(2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.

(3) Subsection (1) does not have effect in relation to a request by a person for access to a document:

(a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by:

(a) the Commonwealth or a State; or

(b) an authority of the Commonwealth or of a State; or

(c) a Norfolk Island authority; or

(d) a local government authority.

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(5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

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

**SCHEDULE OF DOCUMENTS**

<b>Name of document</b>	<b>Date of document</b>	<b>Decision on access</b>
Copy of original Deed – NSW Bookmakers Superannuation Co-operative Society Limited	1974	Release
Deed of Amendment – NSW Bookmakers Superannuation Fund	28 July 1994	Release
Deed of Amendment – NSW Bookmakers Superannuation Fund	2000	Release
Deed of Amendment – NSW Bookmakers Superannuation Fund	10 May 2004	Release
Deed of replacement of Trustee – NSW Bookmakers Superannuation Fund	30 July 2004	Release
Deed of Amendment – NSW Bookmakers Superannuation Fund	5 May 2005	Release
Deed of Amendment – NSW Bookmakers Superannuation Fund	30 January 2006	Release
NSW Bookmakers Superannuation Fund – Governing Rules – Piper Alderman	(undated)	Release