

**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:** 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 a notice seeking leave to appear as a witness before the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry or if such a document does not exist, a copy of a summons from the Royal Commission pursuant to Section 2 of the Royal Commission Act 1902 for one or more APRA Members to appear as witnesses before the Royal Commission.
- My decision:** *Refuse access to the documents specified in the Applicant's request, under section 24A of the FOI Act, as the documents cannot be found or do not exist.*

**MATERIAL FACTS**

1. I refer to your email dated 11 March 2018, in which you sought access under the FOI Act to:

*"The document I seek is a notice seeking leave to appear as a witness before the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.*

*If such a document does not exist then the document I seek is a copy of a summons from the Royal Commission pursuant to Section 2 of the Royal Commission Act 1902 for one or more APRA Members to appear as witnesses before the Royal Commission."*

(your **FOI request**).

2. By email dated 14 March 2018, 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 11 March 2018;
  - b) acknowledgment email from FOI Officer to the Applicant dated 14 March 2018;

- c) email correspondence between Solicitor, Legal and Senior Manager, Legal on 12 March 2018;
- 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 conducted all reasonable searches of its records to identify documents relevant to your FOI request. I am satisfied that there are no documents in APRA's possession relevant to your FOI request.
- 5. For this reason, I have decided to refuse access under section 24A of the FOI Act, as the documents requested cannot be found or do not exist.

## **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
  - Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)
  - In person:  
*Office of the Australian Information Commissioner  
Level 3, 175 Pitt Street  
Sydney NSW 2000*

### ***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.



Sigrid Neumueller  
FOI Officer  
Australian Prudential Regulation Authority  
Date: 5 April 2018

***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.