

**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:** Ray Hall
- 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 lodged with APRA related to NSW Bookmakers Superannuation Fund from the time APRA was established until July 2004 which were referred to as section 35c reports which included the audited accounts of this fund, the Auditors Report and the auditors compliance report.
- My decision:** Uphold the original FOI decision and *refuse access*, under section 24A of the FOI Act, to the documents specified in the Applicant's request because the documents cannot be found or do not exist.

MATERIAL FACTS

1. I refer to your FOI request dated 19 March 2018 (your **original FOI request**), in which you sought the following information:

"I am seeking a copy of documents lodged with APRA related to NSW Bookmakers Superannuation Fund from the time APRA was established until July 2004 which were referred to as section 35c reports which included the audited accounts of this fund, the Auditors Report and the auditors compliance report".
2. APRA acknowledged receipt of your original FOI request on 20 March 2018. APRA made a decision to refuse access under section 24A of the FOI Act (the **original FOI decision**) in response to your original FOI request on 18 April 2018.
3. APRA received your request for an internal review of APRA's original FOI decision (the **internal review application**) by email, on 24 April 2018.

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 19 March 2018;
 - b) acknowledgment email from FOI Officer to the Applicant dated 20 March 2018;

- c) email correspondence between Senior Analyst, SID and FOI Officer in April and May 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

- 5. The FOI Officer notified you on 18 April 2018 of APRA's decision to refuse access under section 24A of the FOI Act, because the documents cannot be found or do not exist..
- 6. Paragraphs 4 and 5 of the original FOI decision are reproduced below:
 - 4. *"APRA has conducted all reasonable searches of its records to identify documents relevant to your FOI request. I am satisfied that documents relevant to your FOI request cannot be found or do not exist.*
 - 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."*
- 7. You made the following statement in support of your internal review application:

"My request was refused under section 24A of the FOI Act because "the documents cannot be found or do not exist"

This Superannuation Fund NSW Bookmakers Superannuation Fund commenced in 1974 and it is noted that it was legislated that in 1993 that Trustees were required to provide APRA with annual returns and audits of same. Accordingly, it is expected that they would exist."
- 8. I have considered your statement in detail:
 - a) APRA conducted all reasonable searches of its records to identify relevant documents in response to your original FOI request, including key word searches of APRA's official record management system and searching through APRA's soft copy files for the relevant fund; and
 - b) in response to your internal review request, additional key word searches of APRA's official record management system were undertaken.
- 9. I have reviewed all relevant documentation and the process of investigation undertaken by the FOI Officer. For the reasons outlined above, I am satisfied that the relevant documents cannot be found or do not exist. Accordingly, I have decided to uphold the original FOI decision to refuse access under section 24A of the FOI Act.

ADVICE TO APPLICANT AS TO RIGHTS OF REVIEW

Application for review by Information Commissioner

10. 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.
11. 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.
12. An application for review by the Information Commissioner should be sent:
 - Online: www.oaic.gov.au
 - Post: GPO Box 5218, Sydney NSW 2001
 - Email: 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

13. 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.
14. 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

15. 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.
16. 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: 23 May 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.