

**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 documents relating to an instrument under hand signed by all of the directors of SABMiller plc and signed by all of the lawfully appointed trustees or trustee which would evidence the Power of Termination has been exercised in accordance with its terms; or a letter to APRA from PFS Nominees Pty Ltd which advises APRA that such a document exists and is available for inspection by APRA.
- My decision:** *Refuse access*, under section 24A(1) 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 email dated 25 June 2018, in which you sought access under the FOI Act to:

“(i) An instrument under hand signed by all of the directors of SABMiller plc (a 'successor company' as described by the Elder Smith & Co Ltd Provident Funds Act 1963 (SA)) and signed by all of the lawfully appointed trustees or trustee which would evidence the Power of Termination has been exercised in accordance with its terms; or

(ii) A letter to APRA from PFS Nominees Pty Ltd (a NAB subsidiary company) which advises APRA that such a document exists and is available for inspection by APRA.

The document(s) I seek are copy of either of these documents which would confirm that the National Australia Bank (NAB) did not make a misleading statement to APRA.”

(your **FOI request**).

2. By email dated 26 June 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 25 June 2018;
- b) acknowledgment email from FOI Officer to the Applicant dated 26 June 2018;
- c) email correspondence between Specialised Institutions Division staff and Solicitor, Legal in June and July 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 taken all reasonable steps to locate the documents relevant to the request. I am satisfied that the relevant documents do not exist or cannot be found.
5. For this reason, I have decided to refuse access to the relevant documents under subsection 24A(1) 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
 - 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

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: 24.7.18

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.