

**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:** Lauren Willars, 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 correspondence from ASIC dated between 1 March 2009 and 31 December 2010 to APRA making inquiries related to Foster's Group Superannuation Fund where the words "death benefits" or "widows" or "survivorship pensions" are mentioned.
- My decision:** *Refuse access*, under section 24A(1) of the FOI Act, to the document 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 1 November 2018, in which you sought access under the FOI Act to:

"In 2006 APRA registered a superannuation fund then known as the Foster's Group Superannuation Fund

APRA would have obtained copies of the Deeds of this fund as part of the fund registration process. The purported trustee at the time was CCSL Ltd {Corporate Combined Superannuation Limited}

ASIC has made representations to the effect that in 2009 to 2010 ASIC made "comprehensive inquiries" with APRA in relation to a complaint that the widows of male fund members of the Foster's Group Superannuation Fund were not being paid their death benefits in accordance with the founding Trust Deed as lawfully amended.

The documents I seek are copies of any correspondence from ASIC dated between 1 March 2009 and 31 December 2010 to APRA making any such inquiries related to this fund where the words "death benefits" or "widows" or "survivorship pensions" are mentioned."

(your **FOI request**).

2. By email dated 1 November 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 1 November 2018;
 - b) acknowledgment email from FOI Officer to the Applicant dated 1 November 2018;

- c) email correspondence between FOI Officer and Senior Manager, Resolution and Enforcement in November 2018;
- d) email correspondence between FOI Officer and Manager, SID in November 2018;
- 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 documents which fall within the scope of your FOI request. Based on the information before me, I am satisfied that the documents cannot be found or do not exist.
- 5. Accordingly, I have refused access to the documents specified in your FOI request under section 24A(1) of the FOI Act.
- 6. A copy of section 24A of the FOI Act is attached to this decision.

ADVICE TO APPLICANT AS TO RIGHTS OF REVIEW

Application for Internal Review of Decision

- 7. 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.
- 8. 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.
- 9. 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).
- 10. 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.
- 11. 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*

- 12. 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

13. 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.
14. 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.
15. 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

16. 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.
17. 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

18. 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.
19. 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.



Lauren Willars
FOI Officer
Australian Prudential Regulation Authority
Date: 27 November 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.