



FOI 20-14

9 October 2019

Phillip Sweeney

By email: foi+request-5563-8ff33d98@righttoknow.org.au

Dear Mr Sweeney

NOTICE OF DECISION MADE UNDER SECTION 23 OF THE FREEDOM OF INFORMATION ACT 1982 (CTH) (FOI ACT) WITH REASONS UNDER SECTION 26

Applicant: Phillip Sweeney

Decision-maker: Evelyn Ong, an authorised officer of the Australian Prudential Regulation Authority (APRA) for the purposes of subsection 23(1) of the FOI Act.

FOI Request: *"I am seeking copies of the documents identified as:*

'I attach my notes and other documentation received from the parties as a result of my attendance at the hearing'

In the ISC Minutes Paper that was released in a redacted format."

For the purposes of this notice of decision:

Document 1 refers to the reference "my notes"; and

All other documents refers to the reference "other documentation";

in your FOI Request.

Decision: Refuse access to Document 1 based on the reasons given in this notice of decision; and

refuse access to All other documents specified in the Applicant's request under section 24A of the FOI Act.

MATERIAL FACTS

1. On 7 September 2019, you made the FOI request by email under the FOI Act.
2. On 9 September 2019, APRA acknowledged receipt of the FOI request by email.

EVIDENCE AND MATERIAL

3. I relied on the following evidence and material in making my decision:
 - a. the Applicant's request received by APRA on 7 September 2019;
 - b. acknowledgment email from APRA FOI to the Applicant dated 9 September 2019;
 - c. relevant sections of the *Australian Prudential Regulation Authority Act 1998* (Cth) (APRA Act);
 - d. relevant sections of the FOI Act; and
 - e. guidelines issued by the Office of the Australian Information Commissioner to date (FOI Guidelines).

REASONS

4. After conducting all reasonable searches of its records and its predecessor agency's records, APRA identified one document as relevant to the part of the FOI request, namely Document 1 (the relevant document).
5. I have decided to refuse access to Document 1 because Document 1 would be privileged from production in legal proceedings on the ground of legal professional privilege under section 42 of the FOI Act.
6. I have decided to refuse access to All other documents under section 24A of the FOI Act.

Document subject to legal professional privilege

7. Section 42 of the FOI Act provides APRA may refuse a request for access to a document if the document is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.
8. Paragraphs 5.127 and 5.129 of the FOI guidelines requires APRA to consider whether:
 - a. there is a legal-advisor client relationship;
 - b. the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation;
 - c. the advice given is independent; and
 - d. the advice given is confidential.
9. Document 1 was prepared in circumstances, where the predecessor agency to APRA retained services of lawyers for the purposes of obtaining professional advice. The purpose of the advice in the relevant documents relates to the full and frank disclosure between the lawyer and the predecessor agency.

10. I am satisfied the communication in Document 1 is a privileged communication as:
 - a. there was a legal-advisor client relationship;
 - b. the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation;
 - c. the advice given was from an independent in house-lawyer; and
 - d. the advice given was confidential.
11. Disclosing the information in Document 1 would prejudice APRA's continuing ability to have confidential communications with its legal advisers. Based on the information before me, I am satisfied Document 1 would be privileged from production in legal proceedings on the ground of legal professional privilege. I have decided to refuse access under section 42 of the FOI Act to Document 1.

Documents cannot be found, do not exist or have not been received

12. Based on the information before me, APRA has taken all reasonable steps to locate the documents relevant to the request and I am satisfied that the documents cannot be found. Accordingly, I refuse access under section 24A of the FOI Act.

RIGHTS OF REVIEW

Application for Internal Review of Decision

13. Under 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 the review and make a fresh decision on the merits of the case.
14. Under 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.
15. 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).
16. 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.
17. 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

18. 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 the Information Commissioner

19. Under 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.
20. 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.
21. An application for review by the Information Commissioner may be lodged in the following ways:

Online	Complete and lodge the online review form at: https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/
Post	Director of FOI Dispute Resolution GPO Box 5218, Sydney NSW 2001
Email	foidr@oaic.gov.au
Facsimile	(02) 9284 9666
Delivered in person	Office of the Australian Information Commissioner Level 3, 175 Pitt Street Sydney NSW 2000

Application for review by Administrative Appeals Tribunal

22. 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.
23. 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

24. You may complain to the Information 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.
25. You may complain to the Information Commissioner either orally or in writing, by any of the methods outlined above, or by telephone, on 1300 363 992.



Evelyn Ong
FOI Officer
Australian Prudential Regulation Authority
Date: 9 October 2019