



Internal review decision made under the *Freedom of Information Act 1982*

Applicant: Julie Middleton

Decision-maker: Ben (person number 2355), an authorised officer of the Australian Prudential Regulation Authority (APRA) for the purposes of section 23(1) of the *Freedom of Information Act 1982* ('FOI Act').

FOI reference: FOI 20-25 (Internal Review of FOI 20 – 21)

Decision: I affirm the original FOI decision, to refuse access to the other documents subject to the original FOI request, as those documents do not exist.

Summary

1. On 21 November 2019 you requested under the FOI Act:

*"1. Total annual number of Income Protection Insurance claims approved from 1992 to 2018;
2. The total annual numbers of Income Protection Insurance claims approved for each State and Territory from 1992 to 2018. Totals for all eight State and Territory governments will reconcile with the figures in point 1.
3. Total annual amount of Income Protection Insurance payments from 1992 to 2018.
4. The total annual amounts of Income Protection Insurance payments from 1992 to 2018 for each State and Territory. Totals for all eight State and Territory governments will reconcile with the figures in point 3."*

(*'the original FOI request'*)

2. On 20 December 2019 APRA made a decision to grant access to one document and to refuse access to all of the other documents on the basis of section 24A of the FOI Act (*'the original FOI decision'*).

3. On 20 December 2019 APRA received your request for an internal review of the original FOI decision (*'the internal review application'*).

4. You made the following statement in support of the internal review application:

"APRA has not satisfied my request for Statistics for Income Protection Insurance. The spreadsheet provided makes no reference to Income Protection."

The National Claims and Policies Database (NCPD) was established by APRA in 2003, at the request of the Federal Government in consultation with the insurance industry. APRA would have the information requested in my FOI request and could publish much more information that would be in the public interest."

Material taken into account

5. I relied on the following evidence and material in making my decision:

- a) the original FOI request;
- b) acknowledgment of FOI request from FOI Officer to the Applicant dated 22 November 2019;
- c) email correspondence between APRA staff between 2 and 19 December 2019;
- d) the original FOI decision;
- e) the internal review application;
- f) memorandum from FOI Officer dated 13 January 2020;
- g) relevant sections of the FOI Act; and
- h) guidelines issued by the Office of the Australian Information Commissioner to date (FOI Guidelines).

Reasons

- 6. I decided to refuse access to the other documents as those documents do not exist.
- 7. APRA was unable to identify the other documents relevant to your request, notwithstanding the reasonable searches it has undertaken. I am satisfied APRA has taken all reasonable steps to find those documents having regard to:
 - a) the terms of the your requests;
 - b) the subject matter of the documents;
 - c) the current and past file management systems and the practice of orderly destruction or removal of documents;
 - d) APRA's record management systems and practices; and
 - e) the areas within APRA who may be able to assist with the location of the documents you seek access to.
- 8. For these reasons, I am refusing the request in accordance with section 24A of the FOI Act.

NCPD

- 9. Aggregate (level 1) and detailed (level 2) reports from the National Claims and Policies Database (NCPD) for public and products liability and professional indemnity insurance can be accessed via <http://www.ncpd.apra.gov.au/Home/Home.aspx>.

Rights of review

- 10. Under section 54L of the FOI Act, you have the right to apply to the OAIC for a review of my decision. The application for review by the OAIC must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online	https://forms.business.gov.au/aba/oaic/foi-review-/
Post	GPO Box 5218, Sydney NSW 2001

Email	FOIDR@oaic.gov.au
Facsimile	(02) 9284 9666
Street address	Office of the Australian Information Commissioner Level 3, 175 Pitt Street Sydney NSW 2000

11. More information about your review rights under the FOI Act is available here:
<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-10-review-by-the-information-commissioner/>

Ben (person number 2355)
FOI Officer

17 January 2020



FREEDOM OF INFORMATION ACT 1982 (CTH)

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
 - (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or

- (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

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.