



Internal review decision

- Applicant:** Phillip Sweeney
- 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 21 – 5
- Decision:** Set aside the original decision and grant access to the relevant document.

Summary

1. On 26 July 2020 you made the following FOI request:
“The document I seek is a copy of the letter advising the trustee [of the Australia Post Superannuation Scheme] that APRA had granted this registration number.”
2. On 24 August 2020 APRA made the decision to refuse access to one document on the basis of section 38 of the FOI Act ('the original FOI decision').
3. On 24 August 2020 APRA received your email request for an internal review of the original FOI decision ('the internal review application').

Material taken into account

4. I relied on the following evidence and material in making my decision:
 - a) the FOI request dated 26 July 2020;
 - b) acknowledgment of FOI request from FOI Officer to the Applicant dated 27 July 2020;
 - c) email correspondence between APRA staff between 31 July – 5 August 2020;
 - d) the original FOI decision;
 - e) the internal review application;
 - f) memorandum from FOI Officer dated 18 September 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

5. I reproduce relevant paragraphs of the original FOI decision:

“APRA has conducted all reasonable searches of its records and identified one document relevant to the FOI request.

I have decided to refuse access to the relevant document under section 38 of the FOI Act and section 56 of the APRA Act. My reasons for the refusal are as follows:

Secrecy Provisions

I have taken the following approach in applying section 38 of the FOI Act and section 56 of the APRA Act:

- a. *under section 38 of the FOI Act, a document is exempt if disclosure is prohibited under a provision of an enactment and section 38 expressly applies to that provision;*
 - b. *subsection 56(11) of the APRA Act expressly applies section 38 of the FOI Act so that any document that is a ‘protected document’ or contains ‘protected information’ within the meaning of subsection 56(1) of the APRA Act is also an exempt document under section 38 of the FOI Act;*
 - c. *under section 56(2) of the APRA Act it is an offence to directly or indirectly disclose protected documents and/or protected information unless a specified exemption applies. This offence provision is binding on APRA staff members. The offence is punishable by up to two years imprisonment;*
 - d. *a ‘protected document’ is defined in section 56(1) of the APRA Act to include documents given or produced under or for the purposes of a prudential regulation framework law, and containing information relating to the affairs of a financial sector entity. The Superannuation Industry (Supervision) Act 1993 is a prudential regulation framework law. The relevant document was given or produced and disclosed or obtained under, or for the purposes of, this prudential regulation framework law. Therefore, the document is a protected document unless otherwise publicly available;*
 - e. *‘protected information’ is defined in section 56(1) of the APRA Act to include information disclosed or obtained under or for the purposes of a prudential regulation framework law, and relating to the affairs of a financial sector entity. For the same reasons set out in paragraph (d) above, information contained in the document is protected, unless otherwise publicly available; and*
 - f. *the information and the document are not otherwise publicly available.*
6. The following statements were made in support of the internal review application:
- a) *“I have made a similar request in the past for the same document except for the name of the fund being different. I refer to my FOI request dated 13 August 2018 seeking a copy of the decision of APRA to register the MLC Super Fund.”*
 - b) *“Lauren Willars granted access, under 11A(3) of the FOI Act and provided a copy of the letter dated 8 June 2016 signed by Paul Tattersall, GM, Diversified Institutions Division that confirmed to NULIS Nominees (Australia) Ltd that APRA had granted fund registration (R1077223) to MLC Super Fund.”*

c) *“On the basis that the document I seek does not contain any protected information and that APRA has released a near-identical document in the past I am seeking an Internal Review of the response to this FOI request.”*

7. I considered your statements, reviewed all relevant documentation and the process that was undertaken by the FOI Officer.
8. I set aside the original FOI decision and grant access to the relevant document under section 11A(3) of the FOI Act.

Rights of review

9. 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	Complete and lodge the online review form at: https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/
Post	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

10. 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

23 September 2020

Schedule of relevant documents

Doc No.	Description	Method of release
1	Decision to register an RSE – Australia Post Superannuation Scheme	Attached

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).