



FOI 21-8

4 September 2020

Phillip Sweeney
Right to Know

By email: [\[redacted\]](#)

Dear Mr Sweeney

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: Joanne (Person number 3276), an authorised officer of the Australian Prudential Regulation Authority (**APRA**) for the purposes of section 23(1) of the FOI Act.

FOI Request: “This representation [that I was making a complaint that applied to only one fund member (myself) and that my 'primary concern' did not apply to the management of the fund as a whole concern] by ASIC Officers is rebutted by a letter dated 5 November 2010 (APRA ref: APRA08/004080) and the attached file note of a phone discussion with Mr Phil McGrath from the Superannuation Complaints Tribunal {SCT} send to Ms Thea Rosenbaum (APRA) by myself.

The documents I seek are a copy of this letter to APRA and a copy of the attached file note from the SCT.”

(your **FOI request**).

My decision: Grant access, under subsection 11A(3) of the FOI Act, to the document specified in the Applicant’s request.

MATERIAL FACTS

1. On 8 August 2020, you made the FOI request by email under the FOI Act.
2. On 10 August 2020, APRA acknowledged receipt of the FOI request by email.

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 8 August 2020;

- b) acknowledgment email from FOI Officer to the Applicant dated 10 August 2020;
- c) correspondence between APRA staff between 31 August – 4 September 2020;
- 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. APRA has conducted all reasonable searches of its records and identified one document relevant to your FOI request (**relevant document**).
- 5. I have decided to grant access to the relevant document under section 11A(3) of the FOI Act.

RIGHTS OF REVIEW

Application for Internal Review of Decision

- 6. 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.
- 7. 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.
- 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. 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.

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 maybe 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

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.

Joanne (Person number 3276)
FOI Officer
Australian Prudential Regulation Authority
Date: 4 September 2020

Schedule of documents to be released

Doc No.	Description	Method of release
1	Letter	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).