



## 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 – 8
- Decision:** Vary the original decision and grant access to the further document.

## Summary

1. On 8 August 2020 you made the following FOI request:

*"Misrepresentations have been made by ASIC officers... that my "primary concern" in complaints lodged with the Superannuation Complaints Tribunal... was along the following lines:*

*"My primary concern in this complaint is that I suspect that the trustee of my superannuation fund made a mistake in determining my Final Average Salary (FAS) when determining a lump sum superannuation defined benefit {'payout'} provided to me in January 2007".*

*That is 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 {ie Section 14(6) of the Superannuation (Resolution of Complaints) Act 1993}*

*This representation of my 'primary 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} sent 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."*

(‘the original FOI request’)

2. On 4 September 2020 APRA made the decision to grant access to one document on the basis of section 11A(3) of the FOI Act (‘the original FOI decision’).
3. On 4 September 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 original FOI request dated 8 August 2020;
- b) acknowledgment of FOI request from FOI Officer to the Applicant dated 10 August 2020;
- c) email correspondence between APRA staff between 2 September – 4 September 2020;
- d) the original FOI decision;
- e) the internal review application;
- f) memorandum from FOI Officer dated 2 October 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 grant access to the relevant document under section 11A(3) of the FOI Act.*

6. The following statements were made in support of the internal review application:

- a) *“The document I was seeking is dated 5 November 2010 with an attached file note from the Superannuation Complaints Tribunal.”*
- b) *“The copy provided is dated 15 September 2010 – which does not match the FOI request.”*

7. I considered your statements, reviewed all relevant documentation and the process that was undertaken by the FOI Officer. During this process APRA identified a further relevant document that might reasonably be taken to be included within the description of the original FOI request.

8. I vary the original FOI decision and grant access to that further document.

**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:

<b>Online</b>	Complete and lodge the online review form at: <a href="https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/">https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/</a>
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<b>Post</b>	GPO Box 5218, Sydney NSW 2001
<b>Email</b>	<a href="mailto:foidr@oaic.gov.au">foidr@oaic.gov.au</a>
<b>Facsimile</b>	(02) 9284 9666
<b>Delivered in person</b>	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

02 October 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).