

UNCLASSIFIED



AFP
AUSTRALIAN FEDERAL POLICE

Our ref: CRM 2021/107

20 August 2020

Mr Phillip Sweeney

By email: foi+request-6589-aa8dc3ec@righttoknow.org.au

Dear Mr Sweeney

Freedom of Information request

I refer to your application dated 10 August 2020, under *the Freedom of Information Act 1982* (the Act).

Attached at Annexure A to this letter is my decision and statement of reasons for that decision. A schedule of documents identified as falling into the scope of your request is at Annexure B.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jaqueline Ellery', is written over a light blue horizontal line.

Jaqueline Ellery
Principal FOI Officer/ Team Leader
Freedom of Information and Information Law
Chief Counsel Portfolio

POLICING FOR A SAFER AUSTRALIA

**STATEMENT OF REASONS RELATING TO AN FOI REQUEST BY
PHILLIP SWEENEY**

I, Jaqueline Ellery, Principal FOI Officer, Freedom of Information and Information Law, am an officer authorised under section 23 of the Act to make decisions in relation to the Australian Federal Police.

What follows is my decision and reasons for the decision in relation to your application.

BACKGROUND

On 10 August 2020, this office received your request seeking access to:

“Requesting letter dated 22 August 2016 (AFP ref: PROMIS 5981669) from Julie Drummond to Phillip Sweeney.”

SEARCHES

Searches for documents were undertaken by the relevant line area and included:

- a) a “text” search of the AFP’s investigation case management system PROMIS for records relating to “5981669”;

WAIVER OF CHARGES

Given the request has totalled only four pages and was not a complex request to process, I am waiving any further fees and charges which are normally associated with the processing of applications under the Act.

DECISION

I have identified one document relevant to your request.

A Schedule of each document and details of my decision in relation to each document is at Annexure B.

I have decided that one document is released with deletions pursuant to subsection 22(1)(a)(ii) of the Act.

My reasons for this decision are set out below.

Folios to which subsection 22(1)(a)(ii) applies:

Subsection 22(1)(a)(ii) of the Act provides that:

- “(1) Where:
 - (a) an agency or Minister decides:
 - (ii) that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request;”

The parts of documents identified as exempt under this section of the Act contain information which is considered irrelevant to the request.

UNCLASSIFIED

On 17 August 2020, the AFP informed you that unless you objected, the AFP would treat the names of AFP members, other than the Senior Executive, and direct contact numbers and mobile telephone numbers of AFP members as irrelevant to the scope of the request. As you did not object, I am satisfied that this information is irrelevant to the scope of your request.

Accordingly, I find that parts of the documents are regarded as irrelevant to the request under subsection 22(1)(a)(ii) of the Act.

EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED

In reaching my decision, I have relied on the following:

- ❖ the scope of your application;
- ❖ the contents of the documents;
- ❖ *Freedom of Information Act 1982*; and
- ❖ Guidelines issued by the Office of the Australian Information Commissioner.

*****YOU SHOULD READ THIS GENERAL ADVICE IN CONJUNCTION WITH THE LEGISLATIVE REQUIREMENTS IN THE FREEDOM OF INFORMATION ACT 1982*****

REVIEW AND COMPLAINT RIGHTS

If you are dissatisfied with a Freedom of Information decision made by the Australian Federal Police, you can apply either for internal review of the decision, or for a review by the Information Commissioner (IC). You do not have to apply for internal review before seeking review by the IC.

For complaints about the AFP's actions in processing your request, you do not need to seek review by either the AFP or the IC in making your complaint.

REVIEW RIGHTS under Part VI of the Act

Internal review by the AFP

Section 53A of the Act gives you the right to apply for internal review in writing to the AFP within 30 days of being notified of a decision. No particular form is required. It would assist the independent AFP decision-maker responsible for reviewing the file if you set out in the application, the grounds on which you consider that the decision should be reviewed.

Section 54B of the Act provides that the internal review submission must be made within 30 days. Applications should be addressed to:

Freedom of Information
Australian Federal Police
GPO Box 401
Canberra ACT 2601

REVIEW RIGHTS under Part VII of the Act

Review by the Information Commissioner

Alternatively, section 54L of the Act gives you the right to apply directly to the IC, or following an internal review by the AFP. In making your application you will need to provide an address for notices to be sent (this can be an email address) and a copy of the AFP decision. It would also assist if you set out the reasons for review in your application.

Section 54S of the Act provides the timeframes for an IC review submission. For an *access refusal decision* covered by subsection 54L(2), the application must be made within 60 days. For an *access grant decision* covered by subsection 54M(2), the application must be made within 30 days.

Applications for IC review should be addressed to:

Office of the Australian Information Commissioner
GPO Box 5128
Sydney NSW 2001

Further, the IC encourages parties to an IC Review to resolve their dispute informally, and encourages agencies to consider possible compromises or alternative solutions to the dispute in this matter. The AFP would be pleased to assist you in this regard.

Information about this process can be found in Part 10 of the Guidelines which are available on the IC's website at <http://www.oaic.gov.au/publications/guidelines.html>.

RIGHT TO COMPLAIN under Part VIIB of the Act

Section 70 of the Act provides that a person may complain to the IC about action taken by the Australian Federal Police in relation to your application.

A complaint to the IC may be made in writing and identify the agency against which the complaint is made. There is no particular form required to make a complaint, but the complaint should set out the grounds on which you consider the action should be investigated.

The IC may be contacted on 1300 363 992.

SCHEDULE OF DECISION – CRM 2021/107
 RELEASE OF DOCUMENTS – Phillip Sweeney

Document No	Folio No	Author	Description	Exemption	Reason
1	1-4	Australian Federal Police (AFP)	Letter to Mr Sweeney from Julie Drummond dated 22 August 2020.	Released in part: Folio 1 – s22(1)(a)(ii)	s22(1)(a)(ii) – Applied to the name and contact details of the AFP staff members in line with our acknowledgment letter agreement with applicant.



Operations Monitoring Centre
GPO Box 485G Melbourne VIC 3001
www.afp.gov.au
ABN 17 864 931 143

Our Ref: PROMIS 5981669

Mr Phillip Sweeney
12 Highland Way
HIGHTON VIC 3216

Dear Mr P. Sweeney,

INFORMATION RECEIVED REGARDING SUPERANNUATION FRAUD

I acknowledge receipt of your letter dated 15 August 2016 in relation to superannuation fraud and fraudulent trust deeds.

The AFP has the primary law enforcement responsibility for investigating breaches of Commonwealth legislation of a criminal nature that directly affects the Commonwealth of Australia.

Following a review of the information provided by you, which fails to provide any details of offenders, suspects or entities etc, no proof of a Commonwealth offence has been identified. Therefore the matters raised are not within the jurisdiction of the AFP to investigate. The AFP will not take any further action in regards to this matter.

I note you have previously sent letters to the AFP of a similar nature in 2011, 2014 and 2015. Your letter will be placed on file, along with our reply.

Yours Sincerely,

s22(1)(a)(ii)

Coordinator
Operations Monitoring Centre
Melbourne Office

22 August 2016

FREEDOM OF INFORMATION ACT 1982
(COMMONWEALTH)

DOCUMENT HAS BEEN RELEASED
UNDER THE FOI ACT BY
THE AUSTRALIAN FEDERAL POLICE

15 August 2016

12 Highland Way
Highton, 3216

Serious Financial Crime Taskforce

C/- Australian Federal Police

GPO Box 485G

Melbourne, 3001

Dear SFCT

Re: Superannuation Fraud

I refer to the **Serious Financial Crime Taskforce** factsheet.

<https://www.afp.gov.au/sites/default/files/PDF/serious-financial-crime-taskforce-factsheet.pdf>

I note that superannuation fraud is one of the initial intelligence priorities of the SFCT.

It is noted that a "**professional facilitator**" may be unaware they are facilitating crime.

This might occur when a new trustee takes over the administration of a superannuation fund without undertaking proper due diligence of the conduct of a former trustee who has engaged in fraudulent conduct in the past. The new trustee cannot however absolve itself from any losses incurred by fund members due to this previous fraudulent conduct.

The SFCT has a particular interest in **professional facilitators** in the areas of policy, regulatory and legislative reform.

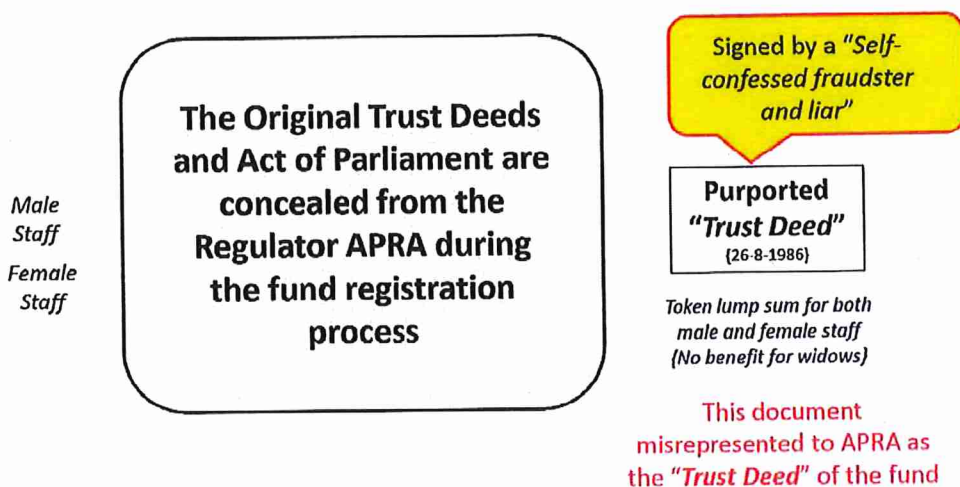
One type of complex crime is one where the crime was instigated several decades ago, however **professional facilitators** have then allowed the crime to go undetected either on a passive or active basis.

I am writing to advise the SFCT of a superannuation fraud that meets this criteria.

THE AUSTRALIAN FEDERAL POLICE

The fraud involves one of Australia's oldest superannuation funds that was established in 1913 and can be summarised by the following two diagrams.

Outline of the Fraud



Note: Not all amending instruments shown

This is a complex fraud since it involves a number of purported trustees who were not lawfully elected to the office of trustee and who have acted as "*professional facilitators*".

A feature of this fraud is the concealment of the genuine Deeds of this fund from the Regulator **APRA** as well as the criminal concealment of these Deeds from the fund members and beneficiaries.

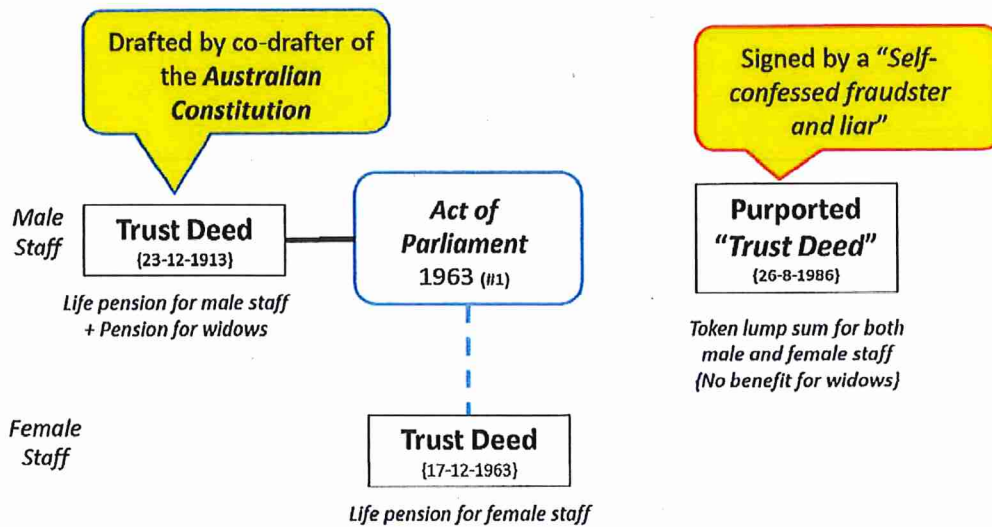
However the fund members have been able to obtain copies of these Deeds with the assistance of the Deputy Premier and Attorney-General of South Australia, the Hon John Rau MP and his Department.

With this evidence it is easy to confirm that the purported "*Trust Deed*" dated 26 August 1986 is fraudulent.

Some of this evidence is included in the following diagram

It is important to note that this matter has a direct connection to a previous major investigation conducted the predecessor of the **ACIC**, the **Federal Crime Authority (FCA)**.

Outline of the Fraud



(#1) – Elder Smith & Co Limited Provident Funds Act 1963 (SA)

Note: Not all amending instruments shown

The SFCT is a multi-agency taskforce and the **Australian Criminal Intelligence Commission** is a partner agency.

The **Australian Criminal Intelligence Commission (ACIC)** will have an important role to play in "collecting, correlating, analysing and disseminating criminal information and intelligence" with respect to serious misconduct related to this superannuation fraud (Subsection 7A(a) of the **Australian Crime Commission Act 2002**).

Therefore evidence of this fraud has been provided to the **ACIC** and additional evidence is currently being provided to the **ACIC**.

Might I therefore ask you to contact Nicole Rose PSM – Deputy Chief Executive Officer **ACIC** to gain access to this evidence as well as principles of law that can be applied to this evidence.

(COMMONWEALTH)

Yours Sincerely

Philip Sweeney
Philip Sweeney

DOCUMENT HAS BEEN RELEASED
UNDER THE FOI ACT BY
THE AUSTRALIAN FEDERAL POLICE

Cc Nicole Rose PSM – Deputy Chief Executive Officer **ACIC**