



FOI 21-42

6 January 2021

Phillip Sweeney
Right to Know

By email: XXXXXXXXXXXXXXXXXXXXXXXXXXXX@XXXXXXXXXX.XXX.XX

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: Ann Quinlan, an authorised officer of the Australian Prudential Regulation Authority (**APRA**) for the purposes of subsection 23(1) of the FOI Act.

FOI request: *“The document (or documents) I seek is a copy of any correspondence from PFS Nominees Pty Ltd, or NULIS Nominees Australia Ltd (or from National Australia Bank or any other NAB subsidiary company) advising APRA that Nicole Susan Smith (who testified at the Hayne Royal Commission) was the Chairman of both PFS Nominees Pty Ltd and NULIS Nominees (Australia) Ltd and that all the other Directors were the same.*

The search period is from 1 January 2016 to 30 June 2016.”

(FOI request).

My decision: Refuse access to the documents specified in the Applicant’s request under section 24A of the FOI Act.

MATERIAL FACTS

1. On 18 November 2020, you made the FOI request by email under the FOI Act.
2. On 20 November 2020, APRA acknowledged receipt of the FOI request by email.
3. On 16 December 2020, APRA extended the decision date under section 15AA(a) of the FOI Act until 7 January 2021.

EVIDENCE AND MATERIAL

4. In making my decision, I have relied on the following evidence and material:
 - a) the Applicant's request received by APRA on 18 November 2020;
 - b) acknowledgment email from FOI Officer to the Applicant dated 20 November 2020;
 - c) email correspondence between APRA staff on 23 December 2020 – 6 January 2021;
 - d) relevant sections of the FOI Act; and
 - e) guidelines issued by the Office of the Australian Information Commissioner to date (**FOI Guidelines**).

REASONS

5. APRA has conducted all reasonable searches of its records in order to identify the document relevant to your FOI request.
6. I have decided to refuse the FOI request for access to the document. My reason for the refusal is as follows:

Documents cannot be found, do not exist or have not been received

7. Based on the information before me, APRA has taken all reasonable steps to locate the document relevant to the request and I am satisfied that the document does not exist. Accordingly, I refuse the FOI request for access to the document under section 24A of the FOI Act.

RIGHTS OF REVIEW

Application for Internal Review of Decision

8. 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.
9. 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.
10. You do not have to pay any other fees or processing charges for an internal review, except fees and charges applicable for providing access to further material, if any, in the document released as a result of the review (for example, photocopying, inspection, etc).
11. 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.

12. 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

13. 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

14. 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.
15. 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.
16. An application for review by the Information Commissioner may be 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

17. 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 the Information Commissioner’s decision by the Administrative Appeals Tribunal (**AAT**).
18. 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

19. You may complain to the Information Commissioner concerning action taken by APRA in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Information Commissioner will conduct an independent investigation of your complaint.
20. You may complain to the Information Commissioner either orally or in writing, by any of the methods outlined above, or by telephone, on 1300 363 992.

Ann Quinlan
FOI Officer
Australian Prudential Regulation Authority
Date: 6 January 2021

FREEDOM OF INFORMATION ACT 1982

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.