



FOI 22-2

11 August 2021

Phillip Sweeney

By email: foi+request-7546-13463aec@righttoknow.org.au

Dear Mr Sweeney,

SECTION 24AB REQUEST CONSULTATION PROCESS (PRACTICAL REFUSAL) UNDER THE *FREEDOM OF INFORMATION ACT 1982* (CTH) (FOI ACT)

I refer to your request received on 13 July 2021 for access to the following documents under the *Freedom of Information Act 1982* (FOI Act):

'The documents I seek are:

(i) correspondence from the new ASIC Chairman, Joseph Longo, to Wayne Byres, the Chairman of APRA (or to Deputy Chair Helen Rowell).

(ii) copies of any documents provided by APRA to Joseph Longo or ASIC by Wayne Byres or APRA

The search period is from 1 June 2021 until the date APRA responds to this FOI request.'

I also refer to your response to APRA's request for more information relating to your request received on 29 July 2021:

'Joseph Longo has made a commitment before a Senate Committee for ASIC to collaborate with APRA.

The correspondence from Joseph Longo (or ASIC) to Wayne Byres, Helen Rowell or APRA would relate to documents obtained or should have been obtained when APRA registered superannuation funds pursuant to the Superannuation Safety Amendment Act 2004 which came into effect in 2006.

The documents that APRA may have provided Joseph Longo would be copies of some of the documents lodged with APRA in order to obtain fund registration and correspondence from a trustee or trustees associated with the documents lodged for fund registration

The search period for correspondence from ASIC is from 1 June 2021 until the time APRA responds to this FOI request.

The search period for documents lodged with APRA in order to obtain fund registration is from 1 January 2006 to 30 June 2006. These would be the documents APRA may have provided to ASIC.'

I, Evelyn Ong, am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

Intention to refuse your request

I have decided that a 'practical refusal reason' exists in relation to your request (section 24AA of the FOI Act).

I intend to refuse access to the documents you have requested. However, prior to my final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under section 24AB of the FOI Act.

Why I intend to refuse your request

Identification of documents: section 15(2)(b) of the FOI Act

Paragraph 15(2)(b) of the FOI Act provides that a request for access to a document must 'provide such information concerning the document as is reasonably necessary to enable a responsible officer of an agency... to identify it.'

I am writing to advise you that your request does not satisfy the requirement set out in paragraph 15(2)(b).

APRA has conducted preliminary inquiries and is of the opinion that it is not possible to identify the documents to respond to your request because it is unclear what documents you consider would comprise 'correspondence from Joseph Longo (or ASIC) to Wayne Byres, Helen Rowell or APRA.'

It is not clear whether you consider that documents 'from Joseph Longo (or ASIC) to Wayne Byres, Helen Rowell or APRA' comprises:

- a) documents provided by Joseph Longo to Wayne Byres, Helen Rowell or any other person at APRA and documents provided by Wayne Byres and Helen Rowell to Joseph Longo or any other person at ASIC; **or**
- b) any documents provided by APRA to ASIC and any documents provided by ASIC to APRA.

In addition, the timeframe for the requested documents is unclear. This is because your request received on 13 July 2021 contained no reference to documents 'lodged with APRA in order to obtain fund registration is from 1 January 2006 to 30 June 2006.'

Substantial and unreasonable diversion of resources: section 24AA(1)(a) of the FOI Act

Subparagraph 24AA(1)(a)(i) of the FOI Act provides that if the work involved in processing a request to an agency for access to a document substantially and unreasonably diverts the resources of the agency from its other operations, a practical refusal reason exists.

It is APRA's opinion that due to unclear wording of your request, a substantial number of documents would potentially be within the scope of your revised request. Therefore, having considered the matters which APRA must have regard to under subsection 24AA(2) of the FOI Act, the work involved in processing your request in its present form, with its considerable size and scope, would substantially and unreasonably divert the resources of APRA from its other operations.

Request consultation process

You now have an opportunity to revise your request to enable it to proceed.

Revising your request can mean narrowing the scope of the request so that it is more manageable or explaining in more detail the documents you want to access. For example, by providing more specific information about exactly what documents you are interested or further revising the timeline, our agency will be able to locate the documents more quickly and avoid using excessive resources to process documents you are not interested in.

Before the end of the consultation period, you must do one of the following in writing:

- withdraw your request; or
- make a revised request; or
- inform us that you do not intend to revise your request.

The consultation period runs for 14 days and starts on the day after you receive this notice.

During this period, you are welcome to ask for assistance from the contact person I have listed below to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. (Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request.)

If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

Contact officer

If you would like to revise your request or have any questions, the contact officer for your request is:

FOI Officer
Australian Prudential Regulation Authority
GPO Box 9836, Sydney NSW 2001
Telephone: (02) 9210 3000
Email: foi@apra.gov.au

Yours sincerely,

Evelyn Ong
FOI Officer
Australian Prudential Regulation Authority