

25 January 2022

EstherV
Right to Know

Foi+request-8231-77281a59@righttoknow.org.au

BY EMAIL

Dear Sir/Madam

Your Freedom of Information Request

I refer to your request received by the Future Fund Management Agency ("**Agency**") by email on 26 December 2021, requesting access under the Freedom of Information Act 1982 ("**FOI Act**") to documents as follows (the "**Request**"):

Please provide documents proving the value amount (in Aud or Usd), current location, and current jurisdiction of the assets managed by FutureFund which are stated to be belonging to We the People. Names of the persons, or entities controlling this fund to be included.

Authorised decision-maker

I am authorised by the principal officer of the Agency under section 23(1) of the FOI Act to make a decision on requests for access to documents. My name and designation are set out below. This letter sets out my decision in relation to your Request for access to information, the reasons for that decision and your review rights in relation to the decision.

My decision in relation to your FOI application

My decision and the reasons for my decision in relation to your Request are set out in the attached Statement of Reasons.

Review rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of the decision.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Agency for internal review of my decision. The internal review application must be made within 30 days of the date of this letter to:

email: foi@futurefund.gov.au
post: Future Fund Management Agency
Locked Bag 20010
Melbourne VIC 3001

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner ("IC") review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for IC review must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

email: foidr@oaic.gov.au

post: Director of FOI Dispute Resolution,
GPO Box 5218, Sydney NSW 2001

fax: 02 9284 9666

Complaint rights

If you are unhappy with the way we have handled your FOI request, you can make a complaint to us. If we do not respond or you are not satisfied with our response, you can lodge a complaint with the IC in writing in one of the ways provided above.

More information about IC reviews and FOI complaints is available on the Office of the Australian Information Commissioner (OAIC) website at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Yours sincerely



Christina Erlenmaier
FOI Decision Maker

Encl.

STATEMENT OF REASONS

EVIDENCE ON WHICH MY FINDINGS AND DECISION ARE BASED

In considering your Request, I relied on the following information and documentary evidence:

- your Request;
- FOI Act;
- FOI Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982;
- advice from investment areas within the Agency; and
- previous consultation with certain of our external investment managers ("**Managers**").

BACKGROUND

The Future Fund Board of Guardians ("**Board**") manages six investment funds ("**Funds**") which were established by enabling legislation and have specific purposes as set out in that legislation. The investments of the Funds are held by the Board for and on behalf of the Commonwealth of Australia. The Future Fund is the primary fund in terms of being significantly larger than the other Funds and its object is to strengthen the financial position of the Commonwealth by making provision for unfunded Commonwealth superannuation liabilities.

The Board is responsible for deciding how to invest the assets of the Funds and invests the assets of the Funds through Managers, as required by legislation. Operating independently of Government, the Board, supported by the Agency, manages the Funds to deliver risk-adjusted returns over the long term in accordance with the relevant Investment Mandate Directions for each of the Funds from Government.

The Board has a unique investment model and has developed a comprehensive investment program using a wide variety of strategies in order to operate effectively in increasingly competitive international financial markets. The Agency is responsible for the development of recommendations to the Board on the most appropriate investment strategy for the Funds and for the implementation of the strategy. The Board and the Agency concentrate on determining the most efficient allocation of risk across investment markets to generate desired returns.

Information in the public domain

The Board and Agency are, first and foremost, accountable to the Commonwealth Government for their activities. The Board and Agency already disclose publicly a range of detailed information relating to their investment activities. These include:

- details of the statutory basis on which the Board and Agency operate (<https://www.futurefund.gov.au/about-us/legislation-and-governance>)
- the publication of a Statement of Investment Policies, which is available on our website (<https://www.futurefund.gov.au/investment/how-we-invest/investment-policies>), which provides investment information for each investment fund including appropriate details on the investment strategy and investment approach;

- the requirement to produce and table an annual report and audited financial statements in Parliament, which is also available online (<https://www.futurefund.gov.au/about-us/annual-reports>), and includes details of the Board's investment strategy and approach to governance, risk management and use of external investment managers. The annual report also includes some tables on asset class exposures, and aggregate physical investments by geographic region.
- quarterly portfolio updates (<https://www.futurefund.gov.au/news-room>), which provide reports on performance and positioning of the investment portfolio as well as commentary on the investment environment and investment activities;
- annual year in review;
- public speeches delivered by senior representatives of the organisation, which include speeches on topics such as our investment strategy and process, and investment in specific asset classes; and
- position papers on topical investment issues.

In addition, where appropriate, and where it does not expose the Board, Agency or Funds to an unacceptable level of risk, the Board and Agency may voluntarily publish other information about their activities and how they invest for the benefit of the public.

DECISION

I have decided to refuse access to the documents requested in your Request on the basis that the information is exempt pursuant to sections 45, 47, 47E and 47G of the FOI Act. I refer to the documents requested in your Request as the "Exempt Documents" in my decision.

Set out in Appendix 1 are relevant extracts of sections 45, 47, 47E and 47G of the FOI Act.

REASONS FOR MY DECISION

I note that no one document currently exists outlining all holdings of the Fund. However, even if such document (or documents) did exist or we were otherwise obliged to generate such a document under the FOI Act, my decision would remain to exempt such a document or documents pursuant to each of sections 45, 47, 47E and 47G of the FOI Act.

Section 47 – commercially valuable information/ trade secrets

Section 47(1)(a) of the FOI Act exempts a document if disclosure would disclose trade secrets. I find that disclosure of the Exempt Documents would involve disclosure of trade secrets. A trade secret is information possessed by one trader that is not generally known which gives the trader an advantage over its competitors. For the reasons that follow, I find the Exempt Documents contain trade secrets.

Section 47(1)(b) of the FOI Act exempts a document if disclosure would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information was disclosed. Information has a commercial value if it is valuable for the purposes of carrying on a commercial activity, for example if it is essential to the profitability of a business operation or if a genuine buyer is prepared to pay to obtain that information. For the reasons that follow, I find the Exempt Documents contain information

having a commercial value that, if disclosed, could reasonably be expected to be destroyed or diminished.

- Collectively, the Funds' portfolios are actively managed, and the Board and Agency devote a significant amount of time and resources to the management and strategy related to both the specific asset classes the Funds are invested in, and the entire portfolio. The disclosure of the Exempt Documents would, or could reasonably be expected to, adversely affect the value of such unique and proprietary information and put the Funds and Managers at a competitive disadvantage.
- Details of the portfolio of investments that the Funds invest in are integral to the investment performance of the Funds. Given the nature of investment markets globally and the various investment types, it may be possible to derive commercially valuable information in respect of particular sectors, strategies and themes if the Exempt Documents were made publicly available under the FOI Act. This could reasonably be expected to diminish the value of the Funds and put the Board and its Managers at a competitive disadvantage, particularly when transacting in the marketplace.
- The information sought, as a whole, is valuable to competitors in the market as the release of a document containing the entire list of the Funds' holdings at particular points in time may enable derivation of, or at least informed speculation on, the Board's, Agency's and Managers' strategies and expectations of the performance of those investments and markets.
- The names of particular funds that the Funds have invested in and their value at any point in time, may enable derivation of, or at least informed speculation on, the value of single investments and the value of the Manager itself.
- Many investment opportunities are not offered to the general public and are only offered to selected qualified institutions. The Board and Agency do not publish the names of the specific funds that the Funds invest in or specific fund financial information, and the information sought is not currently publicly available or generally known. Although the names of the Managers are published, it is not presently obvious or known to the market which particular funds the Funds invest in, or what their allocations are with particular funds. Managers have indicated to the Agency that information about their investor base is proprietary information in a highly competitive global industry, and Managers are generally very careful to maintain the confidentiality of the investor mix in their funds.
- In the case of oversubscribed or capacity-constrained funds in particular, Managers often reduce the allocation to some investors to allow for commitments by other investors. In cases where the Board has received an allocation in such a fund which is larger than the Manager's other clients, it may have negative consequences for the relationship between the Manager and its other clients. Particular Managers have indicated that disclosure of this information could reduce the size of allocations offered to the Board in future. In some cases, the Manager may exclude certain investors from a particular fund whilst wishing to maintain a relationship with such investor with respect to future funds. Additionally, some Managers have indicated that the disclosure of the identity of the investors with whom they offer capacity could reveal an important element of their strategy which may harm the relevant Manager and the Funds by

impacting on future opportunities. Such disclosure could also harm relationships between the relevant Manager and their other investors who were not offered the same opportunity to participate or have been allocated different amounts.

I am satisfied that the documents the subject of your Request are exempt under sections 47(1)(a) and 47(1)(b) of the FOI Act.

Section 45 – breach of confidence

Section 45(1) exempts a document if its disclosure would found an action by a person for breach of confidence.

To found an action for breach of confidence a person must be able to:

- i) specifically identify the information in question;
- ii) show that the information has the necessary quality of confidentiality (and is not, for example, common or public knowledge);
- iii) show that the information was communicated in a mutual understanding that the receiver was to keep the information confidential; and
- iv) show that there is actual or threatened misuse of that information.

For the reasons that follow, I find that disclosure of the Exempt Documents would found an action by a person for breach of confidence.

- The information can be identified with specificity, being the information contained in the Exempt Documents.
- The information is confidential in nature. It is known to a limited number of people comprising the Board, Agency and relevant Managers (in the case of each fund) and their and our relevant professional advisers and service providers. Even then, the entirety of the relevant Exempt Documents sought in each part of the Request would not be known by any single Manager, professional adviser or service provider. As is standard practice for institutional investment both in Australia and offshore, investment transaction contracts pursuant to which investments in funds are made by the Board include a contractual obligation of confidentiality and such disclosure would be inconsistent with those obligations. Even in the absence of such contractual obligations, a duty of confidentiality would also be owed under the general law in respect of the information.
- I find the information was communicated within the context of a mutual understanding between the Board and Agency and the various Managers, professional advisers and service providers. At the time of communication of the information, it was accepted that the Board and Agency would treat the information as confidential. I find that the information would not have been provided without that understanding. Many Managers, who manage funds in which the Funds have holdings, have expressed serious concerns in the past about the disclosure of investment information to outside parties.
- I find that disclosure under FOI would be inconsistent with the understanding that the information would be kept confidential. Outside parties would not be subject to the strict obligations of confidentiality under the relevant fund documents, and may have motives which are not aligned with the interests of the relevant funds and Managers. I am satisfied that if the information were disclosed, the various Managers, and potentially their professional and service providers, would suffer detriment.

Accordingly, I am satisfied the documents requested in your Request are exempt under section 45.

Section 47G(1)(a) – unreasonable disclosure of business, commercial or financial affairs

Section 47G(1)(b) – prejudice future supply of information

For the reasons given above, I find that the Exempt Documents concern the business, commercial or financial affairs of organisations which, if disclosed, would or could reasonably be expected to unreasonably affect those organisations adversely in respect of their lawful business, commercial or financial affairs. I also find disclosure of the information could reasonably be expected to prejudice the future supply of business and commercial information to the Agency and the Board.

Some of these Managers have indicated that if their commercial and business information is disclosed, they would reduce or refuse to give the Board access to investment-related information needed for the proper monitoring and management of the Funds' existing investments. Managers also have indicated that, if the Board and Agency are not able to protect their confidential business and commercial information that they would deny the Funds access to new investments.

Accordingly, I find the documents the subject of your Request are conditionally exempt under sections 47G(1)(a) and (b) if they are not already exempt under sections 45 and 47 (as applicable). I discuss the public interest below.

Section 47E(d) – substantial adverse effect on Agency operations

For the above reasons, I also find disclosure of the Exempt Documents could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Agency and the Board.

The Agency and the Board seek to maximise investment returns within the constraints of acceptable but not excessive risk. Their ability to do so effectively and efficiently is dependent on the Agency and the Board being able to operate in competitive commercial markets. Disclosure of the information would restrict the ability in the future to operate in competitive commercial markets which would have a substantial adverse effect on the operations of the Agency and the Board.

Accordingly, I find the documents in the subject of your Request are conditionally exempt under section 47E(d). I discuss the public interest below.

Public interest test

Section 11A(5) of the FOI Act requires me to consider whether providing access to a conditionally exempt document would, on balance, be contrary to the public interest. This requirement only applies in relation to the application of the conditional exemptions to the Exempt Documents under sections 47G and 47E.

I confirm that, in deciding whether access to the information would, on balance, be contrary to the public interest, I did not take into account any of the irrelevant factors set out at section 11B(4) of the FOI Act.

Public interest factors which might favour disclosure

The FOI Act sets out four factors (in section 11B(3)) which would tend to favour access in the public interest, which must be considered if relevant. I have considered whether giving access to the Exempt Documents would:

- i) promote the objects of the FOI Act;
- ii) inform debate on a matter of public importance;
- iii) promote effective oversight of public expenditure; or
- iv) allow a person access to his or her own personal information.

There may be an argument (which I don't agree with) that giving access to the Exempt Documents could promote oversight of the management and efficiency of the investment of the Funds. However, even if that argument were valid, I am of the view that any public interest in disclosure would substantially be outweighed by the public interest factors against disclosure.

Public interest factors which do not favour disclosure

I find that the following public interest factors do not favour access to the Exempt Documents being provided to you:

- The public interest in maintaining confidential relationships with Managers. The giving of access to the Exempt Documents would result in the breach of a general expectation, and contractual obligations where applicable, that relevant Managers' confidential information shared with the Agency or the Board will not be disclosed to others or used for other purposes without their express written consent – which in previous consultations with certain of our Managers they have advised they would not be willing to provide because of the commercial sensitivity of the information.
- The public interest in protecting confidential and commercially sensitive information of third parties. Providing access to the Exempt Documents would disclose sensitive and confidential information relating to the business, commercial or financial affairs of an organisation such as a Manager which, if disclosed, would reasonably be expected to adversely affect the interests of the organisation to which it relates. For example, it would expose those organisations to the real risk that information relating to their affairs could be disclosed to their competitors and other investors.
- The public interest in the Funds being able to receive access to information essential to its ability to operate efficiently and effectively. Giving access to the Exempt Documents is very likely to discourage Managers and other businesses and organisations from providing information, or information of a commercially sensitive nature, to the Agency and Board in the future and, as a result, could reduce opportunities for investment or divestment of public funds and adversely affect the Board and Agency's ability to effectively monitor, manage and trade its investments.
- The public interest in the ability of Australia's sovereign wealth fund to invest and participate in a competitive international marketplace on a similar level to its competitors.
- The disclosure of the Exempt Documents could adversely affect the ability of the Funds to achieve future returns. If the ability of the Agency and the Board to properly manage its investment portfolio is diminished, there is a real risk of decreased investment returns for the benefit of the Commonwealth of Australia. It is expected that disclosure would result in diminished opportunities for the Board to engage high-calibre Managers and competitively participate in domestic and global investment markets (including secondary markets) in the future and, as a result, could reduce opportunities for investment of public monies.

I am satisfied that any benefit to the public of disclosing the Exempt Documents is outweighed by the benefit to the public of not disclosing the Exempt Documents and providing access would, on balance, be contrary to the public interest.

APPENDIX 1 – EXTRACTS OF SECTIONS 45, 47, 47E AND 47G OF THE FOI ACT

Section 45

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.*
- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:
 - (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or*
 - (b) an agency or the Commonwealth.**

Section 47

- (1) A document is an exempt document if its disclosure under this Act would disclose:
 - (a) trade secrets; or*
 - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.**
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
 - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or*
 - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or*
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.**

Section 47E

(1) *A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

...

(d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

Section 47G

(1) *A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*

(a) *would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or*

(b) *could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

(2) *Subsection (1) does not apply to trade secrets or other information to which section 47 applies.*

(3) *Subsection (1) does not have effect in relation to a request by a person for access to a document:*

(a) *by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or*

(b) *by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or*

(c) *by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.*