

GPO Box 2934, Adelaide SA 5001



Australian Government
Australian Taxation Office

Mr Phillip Sweeney
foi+request-825-deb363ef@righttoknow.org.au

Reply to: GPO Box 2934
Adelaide SA 5001

Our reference: 1-67W2DRG
Contact officer: Brooke Sette
Phone: (08) 8208 3758
Fax: (08) 8208 1094

8 January 2015

Dear Mr Sweeney

Freedom of Information Request – Notice of Decision

I refer to your request of 21 December 2014 under the *Freedom of Information Act 1982 (FOI Act)*. Your request was made through the righttoknow.org.au website and sought access to copies of any correspondence received in relation to the cancellation of the ABN for AusBev Superannuation Fund, ABN 60 171 679 448.

Timeframe for Processing your Request

Your request was received by the ATO on 21 December 2014 and as such, the statutory due date to process this request is 20 January 2015. I note that on 23 December 2014 you agreed to a thirty day extension of this due date.

Authority

I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents.

Secrecy Provisions

Section 38 of the FOI Act provides that a document is exempt if its disclosure (or information contained therein) is prohibited under a provision of an enactment that is specified in Schedule 3. For the purposes of section 38 of the FOI Act, Schedule 3 of that Act specifies section 355-25 in Schedule 1 of the *Taxation Administration Act 1953 (the TAA)*.

Section 355-25 of the TAA states:

355-25 Offence – disclosure of protected information by taxation officers

- (1) An entity commits an offence if:
 - (a) the entity is or was a taxation officer; and
 - (b) the entity:
 - ...
 - (ii) discloses information to another entity (other than the entity to whom the information relates or an entity covered by subsection (2)) or to a court or tribunal; and
 - (c) the information is protected information; and

(d) *the information was acquired by the first-mentioned entity as a taxation officer.*

Section 355-30 of the TAA provides a broad definition of the term 'protected information', and means information that:

- was disclosed or obtained under or for the purposes of a law that was a taxation law (other than the Tax Agent Services Act 2009) when the information was disclosed or obtained; and
- relates to the affairs of an entity; and
- identifies, or is reasonably capable of being used to identify, the entity.

Subdivision 355-B of the TAA provides for a number of exceptions to the prohibition on disclosure of protected information. In this circumstance I do not consider that any of the exceptions to disclosure in subdivision 355-B of Schedule 1 of the TAA apply. As such, I am satisfied that any correspondence in our possession relating to the cancellation of ABN 60 171 679 448 is 'protected information' as defined under section 355-30 of the TAA and therefore disclosure is prohibited under section 355-25.

Decision

I refuse access in full.

An FOI application for a superannuation fund made by any person other than the trustee of that fund must be supported by evidence of the person's authorisation to apply on behalf of the fund.

According to the reasons outlined above, and in the absence of any evidence of your appointment as an authorised person in accessing documents under the FOI Act for the aforementioned entity, I can neither confirm nor deny the existence of any correspondence in relation to the cancellation of ABN 60 171 679 448 to which you have referred. I consider that the documents you have sought, should they exist, are exempt in full under section 38 of the FOI Act.

In reaching my decision I relied on the following documentary evidence:

- Your FOI request
- *Freedom of Information Act 1982*
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act.
- *Taxation Administration Act 1953*

Your rights of review

If you are dissatisfied with this decision, you have certain rights of review available to you.

Firstly, under section 54 of the FOI Act, you may apply for an internal review of this decision. Your application must be made within 30 days of you receiving this letter and sent to us via email to FOI@ato.gov.au, quoting reference number **1-67W2DRG**.

An internal review will be conducted by a different officer from the original decision-maker. No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned.

If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commissioner for a review of the internal review decision.

Review by the Australian Information Commissioner

Alternatively, under section 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner without first going to internal review. Your application must be made within 60 days of you receiving this notice.

The Australian Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Australian Information Commissioner's website www.oaic.gov.au.

You can contact the Information Commissioner to request a review of a decision online or by writing to the Information Commission at:

GPO Box 2999
Canberra ACT 2601

For further details regarding the Information Commissioner visit www.oaic.gov.au.

You may also apply to the Information Commissioner if you have not been informed of the outcome of an internal review within 30 days.

Please note: The Australian Government has introduced a Bill into Parliament to abolish the OAIC on 31 December 2014. The Bill had not, however, passed into legislation by the time the Parliament rose in December. For more information about how the OAIC will handle FOI matters please see their [website](#).

Complaints

You may complain to either the Commonwealth Ombudsman or the Australian Information Commissioner about action taken by the ATO in relation to your request. The Ombudsman will consult with the Australian Information Commissioner before deciding who should investigate your complaint.

You can contact the Commonwealth Ombudsman from anywhere in Australia by phoning **1300 362 072** or emailing ombudsman@ombudsman.gov.au.

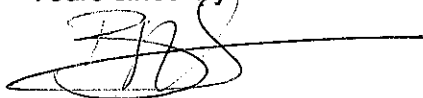
You can contact the Australian Information Commissioner from anywhere in Australia by phoning **1300 363 992** or emailing enquiries@oaic.gov.au.

There is no particular form required to make a complaint to the Ombudsman or the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the ATO as the relevant agency.

For more information

If you have any questions, please phone **13 28 69** between 8.00am and 5.00pm, Monday to Friday, and ask for Brooke Sette on extension **83758**.

Yours sincerely



Brooke Sette
Lawyer
General Counsel
Australian Taxation Office