



Ref no.14/003482

09 January 2015

Mr Phillip Sweeney

Via email: [foi+request-833-d138406a@righttoknow.org.au](mailto:foi+request-833-d138406a@righttoknow.org.au)

Dear Mr Sweeney,

**Request for access to documents under *Freedom of Information Act 1982***

I refer to your email dated 22 December 2014, in which you request for access to documents under the *Freedom of Information Act 1982*. I have taken your request to be for:

- i. audited accounts provided to APRA by AusBev Superannuation Fund for the year ending 30 June 2014.

**Section 12 (Documents open to public access)**

Paragraph 12(1)(b) of the FOI Act provides that a person is not entitled to obtain access under Part III of the FOI Act to a document that is open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge.

Under sub-regulation 2.33(2)(a) of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) the trustee of a superannuation entity (other than a self-managed superannuation fund) must give to a person (other than a concerned person), on request in writing by the person, a copy of the audited accounts of the superannuation entity, together with (whether or not specifically requested) the auditor's report in relation to the accounts (to the extent the trustee has access to the documents).

Sub-regulation 2.05(1) of the SIS Regulations provides that the obligation of the trustee of a superannuation entity under the SIS Regulations to give information on request by a person arises only if the person pays the amount specified by the trustee as the charge for giving the information.

Your request for access to the audited accounts of a superannuation entity ("the documents") was made under subsection 15(1) of the FOI Act. Subsection 15(1) is located in Part III of the FOI Act.

In accordance with paragraph 12(1)(b), you are not entitled to obtain access to the documents under subsection 15(1) of the FOI Act.

I enclose an extract of section 12 of the FOI Act and sub-sections 2.05 and 2.33 of the SIS Regulations for your reference.

Please contact me if you have any questions.

Yours sincerely,



Hannah Cole  
FOI Officer

Tel: 02 9210 3156  
Fax: 02 9210 3430  
[foi@apra.gov.au](mailto:foi@apra.gov.au)

## ***Freedom of Information Act 1982***

### **12 Part not to apply to certain documents**

- (1) A person is not entitled to obtain access under this Part to:
  - (a) a document, or a copy of a document, which is, under the *Archives Act 1983*, within the open access period within the meaning of that Act unless the document contains personal information (including personal information about a deceased person); or
  - (b) a document that is open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge; or
  - (ba) a document that is open to public access, as part of a land title register, in accordance with a law of a State or Territory where that access is subject to a fee or other charge; or
  - (c) a document that is available for purchase by the public in accordance with arrangements made by an agency.
- (2) A person is not entitled to obtain access under this Part to a document or a part of a document that became:
  - (a) a document of a Norfolk Island agency; or
  - (b) an official document of a Norfolk Island Minister;more than 5 years before the commencement of this subsection unless:
  - (c) the document, or that part of the document, contains information that is:
    - (i) personal information about that person; or
    - (ii) information relating to that person's business, commercial or financial affairs;or
  - (d) the document, or that part of the document, is a document or a part of a document access to which is reasonably necessary to enable a proper understanding of:
    - (i) a document of a Norfolk Island agency; or
    - (ii) an official document of a Norfolk Island Minister;to which that person has lawfully had access.
- (3) In this section:  
**enactment** includes a Norfolk Island enactment.

## ***Superannuation Industry (Supervision) Regulations 1994***

### **2.05 Charges for information requested**

- (1) Subject to this regulation, the obligation of the trustee of a superannuation entity under these Regulations to give information on request by a person arises only if the person pays the amount specified by the trustee as the charge for giving the information.
- (2) The amount of the charge must not exceed the reasonable cost to the superannuation entity of giving the information (including all reasonably related costs -- for example, costs of searching for, obtaining and collating the information).
- (3) A policy committee is not liable to any charge for information given to it.

### **2.33 Specific requirements**

- (1) In this regulation:

"concerned person" has the same meaning as in section 1017C of the Corporations Act 2001 .

(2) The trustee of a superannuation entity (other than a self managed superannuation fund) must give to a person (other than a concerned person), on request in writing by the person, a copy of any of the following documents (to the extent the trustee has access to the documents) specified in the request:

- (a) audited accounts of the superannuation entity, together with (whether or not specifically requested) the auditor's report in relation to the accounts;
- (b) for a regulated superannuation fund or approved deposit fund -- a copy of the fund information that was most recently given to the members;
- (c) for a PST -- a copy of the information mentioned in Subdivision 5.7 of Part 7.9 of the Corporations Regulations 2001 that was most recently given to the members.