

**NOTICE OF DECISION MADE UNDER SECTION 23
OF THE FREEDOM OF INFORMATION ACT 1982 (the FOI Act)
WITH REASONS FOR DECISION PROVIDED UNDER SECTION 26**

Applicant: Mr Phillip Sweeney

Decision-maker: Mathew Fussell, an authorised officer of the Australian Prudential Regulation Authority (APRA) for the purposes of section 23(1) of the FOI Act.

Relevant documents: The audited accounts for the AusBev Superannuation Fund for the period 1 July 2013 to 20 January 2014.

My decision: *Refuse access* to all documents specified in the Applicant's request under section 12 of the FOI Act.

MATERIAL FACTS

1. By email dated 22 December 2014, the Applicant requested the audited accounts for the AusBev Superannuation Fund for the period 1 July 2013 to 20 January 2014.
2. By email dated 9 January 2015, Ms Hannah Cole refused access to these documents under section 12 of the FOI Act as the documents sought by the applicant are open to public access.
3. By email dated 9 January 2015, the Applicant requested an internal review of this decision.

EVIDENCE AND MATERIAL RELIED ON

4. In making my decision, I have relied on the following evidence and material:
 - a) The Applicant's request dated 22 December 2014;
 - b) Email from Hannah Cole to the Applicant dated 9 January 2015;
 - c) The Applicant's internal review request dated 9 January 2015;
 - d) Documents set out in the attached Schedule;
 - e) Relevant sections of the *Australian Prudential Regulation Authority Act 1998*;
 - f) Relevant sections of the *Superannuation Industry (Supervision) Act 1993* and *Superannuation Industry (Supervision) Regulations 1994*;
 - g) Relevant sections of the *Freedom of Information Act 1982*; and
 - h) Guidelines issued by the Office of the Australian Information Commissioner to date.

REASONS FOR DECISION

5. The Applicant made a request for access to the audited accounts of a superannuation entity under section 15 of the FOI Act. Section 15 is located in Part III of the FOI Act.
6. Subsection 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.
7. Under sub-regulation 2.33(2)(a) of the 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).
8. 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.
9. Therefore I have decided to refuse access to the documents on the basis that the Applicant is not entitled to obtain access to them under subsection 12 of the FOI Act.

ADVICE TO APPLICANT AS TO RIGHTS OF REVIEW

Application for review by Information Commissioner

10. Pursuant to 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.
11. 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.
12. An application for review by the Information Commissioner should be sent:
 - Online: www.oaic.gov.au;
 - Post: GPO Box 2999, Canberra ACT 2601
 - Fax: +61 2 9284 9666
 - Email: enquiries@oaic.gov.au
 - In person: Level 3, 25 National Circuit
Forrest, ACT, or at
Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney, NSW

Application for review by Administrative Appeals Tribunal

13. 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 that decision by the AAT.
14. The AAT is a completely independent review body with the power to make a fresh decision. Your application to the AAT should be accompanied by a filing fee of \$861, unless you are granted legal aid or you come within an exempt category of persons. The AAT Registrar or Deputy Registrar may waive the fee on the ground that its payment would impose financial hardship on you. The fee may be refunded where you are successful. 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

15. You may complain to the Commissioner concerning action taken by this agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Commissioner will conduct a completely independent investigation of your complaint.
16. You may complain to the Commissioner either orally or in writing, by any of the methods below.
 - Telephone: 1300 363 992
 - email: enquiries@oaic.gov.au
 - GPO Box 2999, Canberra ACT 2601
 - website at www.oaic.gov.au



Mathew Fussell
Australian Prudential Regulation Authority

Date: 5 FEBRUARY 2015

Schedule of Documents**Freedom of Information**

Mr Phillip Sweeney - The audited accounts for the AusBev Superannuation Fund for the period 1 July 2013 to 20 January 2014.

	Description of document	Release/ Non-release
1	The audited accounts for the AusBev Superannuation Fund for the period 1 July 2013 to 20 January 2014.	Non-release section 12

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.