



GPO Box 1797 MELBOURNE VIC 3001  
Our Reference: FOI 1-6A5L2GB  
Contact officer: Julie Galeotti  
Telephone: 03 928 51810  
Facsimile: 03 928 51702  
Issue date: 9 February 2015

Mr Phillip Sweeney

via email to Phillip Sweeney [Phillip Sweeney\\_foi+request-858-61b82e07@righttoknow.org.au](mailto:Phillip.Sweeney_foi+request-858-61b82e07@righttoknow.org.au)

Dear Mr Sweeney,

**Decision regarding your Freedom of Information request**

I refer to your email of 9 January 2015 at 9.43am requesting information under the Freedom of Information Act (FOI Act).

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

**Scope of Request**

You have requested:

- (i) Copies of any correspondence from the ATO to the purported Trustee, CCSL Limited, seeking to confirm whether a purported "successor fund transfer" had in fact taken place with PFS Nominees Pty Ltd, a subsidiary company of the National Australia Bank.
- (ii) Copies of any correspondence from the purported Trustee CCSL Limited, providing copies of Deeds from the trust, confirming that the terms of the trust as properly amended and construed allowed the Trust Estate of the occupation pension established in South Australia on the 23 December 1913 to be lawfully transferred to the Trust Estate of another fund and that the transfer was not being undertaken as a cloak for fraud and for tax avoidance reasons.
- (iii) a copy of any explanation from CCSL Ltd as to why there has been no enactment by the Parliament of South Australia to amend the terms of the occupational pension trust established on the 23 December 1913 to allow the transfer of the Trust Estate to another fund without the Trustee committing a Breach of Trust.

## Decision

I have decided to refuse access to the documents you have requested.

Any relevant documents held by us would have been obtained for purposes relating to a taxation law. They would relate to the affairs of an entity. You are not authorised to represent this entity. The taxpayer confidentiality provisions of the *Taxation Administration Act 1953* (TAA) prohibit the release of this material. There are no exceptions to these provisions which would allow me to provide the documents to you. Any relevant material we hold is therefore considered to be exempt under Section 38 of the FOI Act.

Further details setting out the relevant legislation and reasoning for this decision are located in Attachment A of this letter.

### Your rights of review

If you are unhappy with the decision, you can either request an internal review or request an independent review by the Australian Information Commissioner. You can also apply to the Australian Information Commissioner after an internal review has been conducted.

A request for an internal review needs to:

- be in writing
- be sent to us within 30 days of being notified of my decision, and
- be sent, quoting reference number FOI 1-6A5L2GB via:
  - email at [foi@ato.gov.au](mailto:foi@ato.gov.au) or
  - mail to:  
Australian Taxation Office  
GPO Box 1797, Melbourne Vic 3001

The internal review will be done by an officer who did not make the initial decision.

A request for an independent review by the Australian Information Commissioner needs to:

- be sent within 60 days of being notified of my decision;
- include a copy of this notice;
- include an address where notices can be sent (eg your email address); and
- be sent to the Office of the Australian Information Commissioner:

by mail:	GPO Box 2999 CANBERRA CITY ACT 2601
by fax:	(02) 9284 9666
by email:	<a href="mailto:enquiries@oaic.gov.au">enquiries@oaic.gov.au</a>

You may also apply to the Australian 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. For more information about how the OAIC is handling FOI matters please visit their website at [www.oaic.gov.au](http://www.oaic.gov.au).

## Complaints

Any complaint about the processing of your FOI request can be directed to the Commonwealth Ombudsman. The complaint should set out the grounds on which you consider the action should be investigated. Complaints can be made in writing, by phone, in person or by using an online form available from their website.

- 1300 362 072 (calls from mobile phones at mobile phone rates)
- [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)
- GPO Box 442 Canberra ACT 2601
- [www.ombudsman.gov.au/pages/making-a-complaint/](http://www.ombudsman.gov.au/pages/making-a-complaint/)

For further details regarding the Commonwealth Ombudsman, visit:  
[www.ombudsman.gov.au](http://www.ombudsman.gov.au).

## 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 Julie Galeotti on extension 51810.

Yours sincerely,



Julie Galeotti  
Senior FOI Adviser  
General Counsel  
Australian Taxation Office

## ATTACHMENT A

### Section 38 Freedom of Information Act

Section 38 of the FOI Act provides that a document is exempt if its disclosure is prohibited under a number of provisions including section 355-25 in Schedule 1 of the *Taxation Administration Act 1953* (TAA).

Section 355-25 in Schedule 1 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.

'Taxation officer' is also defined under section 355-30 of the TAA, and means a Commissioner or a Second Commissioner of Taxation, or an individual appointed or engaged under the PS Act and performing duties in the ATO.

Subdivision 355-B in Schedule 1 of the TAA provides for a number of exceptions to the prohibition on disclosure of protected information is prohibited, for example:

- if the information was already publicly available (section 355-45);

- disclosure is made by an ATO officer in performing their duties (section 355-50), including where the disclosure is made to an entity for the purposes of enabling the entity to understand or comply with its obligations under a taxation law.<sup>1</sup>

Any relevant documents held would contain information relating to an identified third party entity and would have been obtained by ATO officers for purposes relating to the administration of taxation laws.

I do not consider that any of the exceptions to disclosure in subdivision 355-B of Schedule 1 of the TAA apply. I am satisfied that this information is 'protected information' as defined under section 355-30 of the TAA, the disclosure of which is prohibited under section 355-25.

Accordingly, I find that the documents requested are exempt under section 38 of the FOI Act.

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<sup>1</sup> See item 6 in the table under section 355-50(2) in Schedule 1 of the TAA. This exception is commonly referred to as the 'performance of duties' exception.