

**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:** Phillip Sweeney
- Decision-maker:** Mathew Fussell, an authorised officer of the Australian Prudential Regulation Authority (APRA) for the purposes of subsection 23(1) of the FOI Act
- Relevant documents:** Documents in relation to successor fund transfers for several superannuation funds.
- My decision:** *Refuse access* under subparagraph 24(1)(b) of the FOI Act to all documents specified in the Applicant's request on the basis that the work involved in processing the request would substantially and unreasonably divert APRA's resources from its other operations.

MATERIAL FACTS

1. In 18 separate emails received by APRA between 27 January 2015 and 16 February 2015, the Applicant requested '...the first two pages of the "Approved Form" lodged by...' trustees of various superannuation funds. The Applicant stated that these Trustees 'would have needed to lodge an Approved Form with APRA pursuant to the provisions of Section 145(2) of the SIS Act.' Details of each request are set out in Schedule A.
2. Under section 24(2) of the FOI Act I have treated these 18 requests as a single request, as I am satisfied that the requests relate to documents, the subject matter of which is substantially the same. I notified the Applicant of this in an email dated 20 February 2015.
3. In my email 20 February 2015, I undertook a request consultation process in accordance with section 24 of the FOI Act. I notified the Applicant under subsection 24AB(2) of the FOI Act of my intention as a delegate to refuse access to the documents which are the subject of the request, on the basis that the work involved in processing the request would substantially and unreasonably divert the resources of APRA from its other operations.
4. By email dated 28 February 2015, the Applicant confirmed that he wished to proceed with the Request. The Applicant did not make any amendment to the Request.

EVIDENCE AND MATERIAL RELIED ON

5. In making my decision, I have relied on the following evidence and material:
 - a) the Applicant's requests set out in Schedule A;
 - b) file note written by Hannah Cole, FOI Officer, dated 18 February 2014;
 - c) file note written by Hannah Cole dated 20 August 2014;
 - d) letter from Hannah Cole to the Applicant dated 1 September 2014;
 - e) file note written by Hannah Cole dated 9 September 2014;
 - f) file note written by Mathew Fussell dated 20 February 2015;
 - g) email from me to the Applicant dated 20 February 2015 advising the Applicant of the matters outlined in subsection 24AB(2) of the FOI Act;
 - h) email from the Applicant to APRA dated 28 February 2015;
 - i) file note written by me dated 2 March 2015;
 - j) relevant sections of the FOI Act; and
 - k) Guidelines issued by the Office of the Australian Information Commissioner to date.

REASONS FOR DECISION

6. A search of a significant number of APRA's physical and electronic files relating to its supervision of various superannuation entities would be required in order to process the request.
7. It is estimated that APRA staff would need to spend approximately 90 hours searching APRA's records to conclusively determine whether the documents sought by the Applicant exist.
8. APRA may also be required to spend additional time to:
 - a) identify applicable exemptions under the FOI Act;
 - b) consult with third parties;
 - c) prepare a draft decision; and
 - d) have a decision maker examine the documents and the draft decision.

Section 24

9. Section 24 of the FOI Act provides that:

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
 - (a) must undertake a request consultation process (see section 24AB); and
 - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists—the agency or Minister may refuse to give access to the document in accordance with the request.
9. Subparagraph 24AA(1)(a)(i) provides that, for the purposes of section 24, a practical refusal reason exists in relation to a request if the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.

10. A request consultation process was carried out in accordance with section 24AB. The Applicant did not revise the scope of the request.

11. On the basis of paragraphs 6 - 8 above I am satisfied that both:

- a) the APRA teams responsible for the supervision of the superannuation entities listed in Schedule A (which would be responsible for searching and retrieving documents relevant to the revised request); and
- b) APRA's Governance, Communication and Information Group and Legal Group (which would be responsible for processing the revised request)

would be substantially impaired in their capacity to deal with their ordinary functions if this request were to be processed given the significant amount of search, retrieval and decision making time that would be involved.

12. After undertaking the request consultation process required by section 24 of the FOI Act I remain satisfied that the work involved in processing the Applicant's request would substantially and unreasonably divert APRA's resources from its other operations. Therefore, I have decided to refuse to give access to all documents sought in the Applicant's request.

ADVICE TO APPLICANT AS TO RIGHTS OF REVIEW

Application for Internal Review of Decision

13. Pursuant to section 54 of the FOI Act, you have the right to apply for an internal review of the decision if you disagree with my decision. If you make an application for review, another officer of APRA will be appointed to conduct a review and make a completely fresh decision on the merits of the case.
14. Pursuant to section 54B of the FOI Act, you must apply in writing for a review of the decision within 30 days after the day the decision has been notified to you.
15. You do not have to pay any other fees or processing charges for an internal review, except for providing access to further material in the document released as a result of the review (for example, photocopying, inspection, etc).

16. No particular form is required to apply for review although it is desirable (but not essential) to set out in the application the grounds on which you consider that the decision should be reviewed.

17. Application for an internal review of the decision should be addressed to:

*FOI Officer, GCI
Australian Prudential Regulation Authority
GPO Box 9836, Sydney NSW 2001
Telephone: (02) 9210 3000
Facsimile: (02) 9210 3020*

18. If you make an application for internal review and we do not make a decision within 30 days of receiving the application, the agency is deemed to have affirmed the original decision. However, under section 54D of the FOI Act, APRA may apply, in writing to the Information Commissioner for further time to consider the internal review.

Application for review by Information Commissioner

19. 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.

20. 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.

21. 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

22. 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.

23. 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

24. 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.

25. 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
APRAinfo Manager
Australian Prudential Regulation Authority

Date: 4 March 2015

Schedule A

APRA reference number	Date received	Request
15/000835	29/01/2015	Approved Form - Local Super and Statewide Superannuation Trust
15/000836	29/01/2015	Approved Form - Australian Christian Superannuation and Christian Super
15/000837	30/01/2015	Approved Form - Private Hospitals Superannuation and Prime Super
15/000838	30/01/2015	Approved Form - Australian Government Employees Superannuation Trust (AGEST) and AustralianSuper
15/000840	27/01/2015	Approved Form - Vision Super and Local Authorities Super
15/000844	2/02/2015	Approved Form - Age Staff Pension Fund and Mercer Superannuation
15/000845	2/02/2015	Approved Form - John Fairfax Retirement Fund and Mercer Superannuation
15/000851	2/02/2015	Approved Form - Coal Industry Superannuation Fund and AUSCOAL Superannuation Fund
15/000852	2/02/2015	Approved Form - Cue Super and NGS Super
15/000853	2/02/2015	Approved Form - City Super and Local Government Superannuation Scheme
15/000854	2/02/2015	Approved Form - Health Super and First State Superannuation Scheme
15/000865	3/02/2015	Approved Form - ConnectSuper and CBUS
15/000952	16/02/2015	Approved Form - BP Superannuation Fund and Plum Superannuation Fund
15/000953	16/02/2015	Approved Form - Amcor Superannuation Fund and Plum Superannuation Fund

15/000954	16/02/2015	Approved Form - Pepsi Superannuation Fund and Plum Superannuation Fund
15/000955	16/02/2015	Approved Form - Philip Morris Superannuation Fund and Plum Superannuation Fund
15/000956	16/02/2015	Approved Form - BHP Billton No. 2 Superannuation Fund and Plum Superannuation Fund
15/000957	16/02/2015	Approved Form - Campbell Arnott's Superannuation Fund and Plum Superannuation Fund

Freedom of Information Act 1982

Sections 24, 24AA, 24AB

24 Power to refuse request—diversion of resources etc.

- (1) If an agency or Minister is satisfied, when dealing with a request for a document, that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:
 - (a) must undertake a request consultation process (see section 24AB); and
 - (b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists—the agency or Minister may refuse to give access to the document in accordance with the request.
- (2) For the purposes of this section, the agency or Minister may treat 2 or more requests as a single request if the agency or Minister is satisfied that:
 - (a) the requests relate to the same document or documents; or
 - (b) the requests relate to documents, the subject matter of which is substantially the same.

24AA When does a *practical refusal reason* exist?

- (1) For the purposes of section 24, a *practical refusal reason* exists in relation to a request for a document if either (or both) of the following applies:
 - (a) the work involved in processing the request:
 - (i) in the case of an agency—would substantially and unreasonably divert the resources of the agency from its other operations; or
 - (ii) in the case of a Minister—would substantially and unreasonably interfere with the performance of the Minister's functions;
 - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:
 - (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
 - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:
 - (i) examining the document; or
 - (ii) consulting with any person or body in relation to the request;
 - (c) making a copy, or an edited copy, of the document;
 - (d) notifying any interim or final decision on the request.
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
 - (a) any reasons that the applicant gives for requesting access; or
 - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
 - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

24AB What is a *request consultation process*?

Scope

- (1) This section sets out what is a *request consultation process* for the purposes of section 24.

Requirement to notify

- (2) The agency or Minister must give the applicant a written notice stating the following:
- (a) an intention to refuse access to a document in accordance with a request;
 - (b) the practical refusal reason;
 - (c) the name of an officer of the agency or member of staff of the Minister (the *contact person*) with whom the applicant may consult during a period;
 - (d) details of how the applicant may contact the contact person;
 - (e) that the period (the *consultation period*) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

Assistance to revise request

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), *reasonable steps* includes the following:
- (a) giving the applicant a reasonable opportunity to consult with the contact person;
 - (b) providing the applicant with any information that would assist the applicant to revise the request.

Extension of consultation period

- (5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

Outcome of request consultation process

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:
- (a) withdraw the request;
 - (b) make a revised request;
 - (c) indicate that the applicant does not wish to revise the request.
- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
- (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
 - (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

Consultation period to be disregarded in calculating processing period

- (8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

No more than one request consultation process required

- (9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.