



Ref no: 15/000980

28 April 2015

Ms Julie Simpson  
Via email: [foi+request-974-a53d3a0a@righttoknow.org.au](mailto:foi+request-974-a53d3a0a@righttoknow.org.au)

Dear Ms Julie Simpson,

**Request for Internal Review under the *Freedom of Information Act 1982***

I refer to your request dated 29 March 2015, in which you sought an internal review of APRA's decision to refuse access under section 24A(1)(b)(ii) of the *Freedom of Information Act 1982* to documents containing the following information:

*"I have an interest in the BP Superannuation Fund.*

*This Fund was transferred to the Plum Superannuation Fund.*

*Can APRA please provide me with a copy of the "approved form" that was used to obtain APRA's approval for the transfer to proceed.*

*Any commercially sensitive material can be redacted from the document released by APRA"*

The internal review application was received by APRA on 29 March 2015.

***Notice of decision***

I attach a notice of decision with statement of reasons. The statement of reasons sets out your rights of review.

Please contact me at 02 9210 3000 or [foi@apra.gov.au](mailto:foi@apra.gov.au) if you have any queries.

Yours sincerely

David Sullivan  
Senior Manager Advice & Drafting, Legal  
Australian Prudential Regulation Authority

**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:** Julie Simpson
- Decision-maker:** David Sullivan, Senior Manager Advice & Drafting, Legal, an authorised officer of the Australian Prudential Regulation Authority (APRA) for the purposes of subsection 23(1) of the FOI Act.
- Relevant documents:** Request for the “approved form” in relation to the transfer of the BP Superannuation Fund to the Plum Superannuation Fund.
- My decision:** *Refuse access* under section 24A(1) of the FOI Act to the document specified in the Applicant’s request as it does not exist.

**MATERIAL FACTS**

1. By email dated 21 February 2015 (the FOI request) and received by APRA on 21 February 2015, the Applicant sought the following:

*‘I have an interest in the BP Superannuation Fund.*

*This Fund was transferred to the Plum Superannuation Fund.*

*Can APRA please provide me with a copy of the “approved form” that was used to obtain APRA’s approval for the transfer to proceed.*

*Any commercially sensitive material can be redacted from the document released by APRA’*

(the document).

2. On 19 March 2015 the FOI Officer notified the Applicant of their decision to refuse access under section s24A(1)(b)(ii) of the FOI Act to the document specified in the Applicant’s request (the original decision).
3. By email dated 29 March 2015 and received by APRA on 29 March 2015 the Applicant applied for an internal review of the original decision (the internal review application).

## EVIDENCE AND MATERIAL RELIED ON

4. In making my decision, I have relied on the following evidence and material:
  - a) the Applicant's request received 21 February 2015;
  - b) acknowledgment email with attached letter from FOI Officer to the Applicant dated 6 March 2015;
  - c) email from Philip Chow, Analyst to FOI Officer dated 19 March 2015;
  - d) file note written by FOI Officer dated 19 March 2015;
  - e) memorandum from FOI Officer dated 21 April 2015;
  - f) letter, notice of decision and statement of reasons dated 19 March 2015;
  - g) internal review application from the Applicant dated 29 March 2015;
  - h) emails from Catherine Bennett, Specialist Superannuation - Industry & Technical Services to FOI Officer dated 22 April 2015;
  - i) email from Philip Chow, Analyst to FOI Officer dated 28 April 2015;
  - j) relevant sections of the *Superannuation Industry (Supervision) Act 1993*;
  - k) relevant sections of the *Australian Prudential Regulation Authority Act 1998*;
  - l) relevant sections of the *Freedom of Information Act 1982*;
  - m) relevant regulations of the *Superannuation Industry (Supervision) Regulations 1994*;
  - n) relevant parts of the *Superannuation Safety Amendment Bill 2003* Explanatory Memorandum; and
  - o) Guidelines issued by the Office of the Australian Information Commissioner to date.

## REASONS FOR DECISION

5. The FOI Officer, a delegate of APRA, notified the Applicant on 19 March 2015 of APRA's decision to refuse access, under section 24A(1) of the FOI Act, to the document specified in the Applicant's request, as it does not exist.
6. The FOI request was for the release of the "approved form" for the transfer of the BP Superannuation Fund to the Plum Superannuation Fund.
7. Paragraphs 3 to 5 of the original decision are reproduced below.

*'3. On 19 March 2015, the FOI Officer was advised by APRA staff of the steps APRA took to search for the documents relevant to the request and was advised that after the search of APRA records no documents relevant to the request exist.*

### Section 24A

*4. Subsection 24A(1) of the FOI Act provides that an agency may refuse a request for access to a document if all reasonable steps have been taken to find the document, and the*

*agency is satisfied that the document is either in the agency's possession but cannot be located, or does not exist.*

*5. Based on the information before me, APRA has taken all reasonable steps to locate the documents relevant to the request, and I am satisfied that no relevant documents exist. Accordingly, I have refused access under subsection 24A(1).'*

8. If the process of application under section 145 of the SIS Act is to be utilized then under subsection 145(2) an applicant must use a form approved by APRA. This form is known as the 'Application form - Approval for transfer under subsection 145(2) of the SIS Act - Joint Application by transferor and transferee fund trustee(s)' and was last updated in August 2013. It is available via the APRA website. According to the author of the current version, the update was for presentation reasons, and no changes to the substance of the form have been made since its inception. I am satisfied that the approved form as it exists on the website is substantively the same as it was at the time of the transfer of the BP Superannuation Fund to the Plum Superannuation Fund in September 2010.
9. The *Superannuation Safety Amendment Bill 2003* Explanatory Memorandum relevantly states that the purpose of section 145 of the SIS Act, as introduced by the *Superannuation Safety Amendment Act 2004* is as follows:

*"5.149 Part 18 is primarily designed to address circumstances where a trustee of a regulated superannuation fund or approved deposit fund has not become an RSE licensee before the end of the licensing transition period. At the end of the transition period, APRA can suspend or remove such a trustee and put in place an RSE licensee as an acting trustee.*

...

*5.150 Part 18 facilitates the transfer of all members' benefits in a registrable superannuation entity to another entity in certain circumstances. The arrangements contained in Part 18 operate alongside, and are designed to complement, the successor fund arrangements that are contained in the SIS Act."*

and;

*"5.152 Section 145 establishes the processes for trustees of transferor funds and transferee funds to make an application to APRA for approval of the transfer of all benefits of members and beneficiaries between the two funds"*.

10. The Applicant is seeking an approved form used in fund transfers referred to in section 145 of the SIS Act 1993, when in fact the transfer of the BP Superannuation Fund to the Plum Superannuation Fund was a 'successor fund transfer', which does not require approval from APRA. According to the APRA Analyst consulted on this matter, by email dated 19 March 2015, the transfer of the BP Superannuation Fund into the Plum Superannuation Fund was different to the amalgamation referred to in section 145 of the SIS Act 1993, and as such, Supervision did not receive an application under that section. The Analyst also searched the relevant 2009 and 2010 folders for documents relating to the fund and no application under section 145 of the SIS Act was found.
11. I have reviewed section 145 of the SIS Act, along with the current approved form issued by APRA, and the information provided by the relevant Analyst. I understand from this information that the form was not relevant and not used in the instance of the FOI request. I have reviewed the original request, and the internal review application. I have also reviewed a case note written by the FOI Officer, and correspondence on the matter. I am satisfied that the document sought by the Applicant does not exist. The

circumstances of the transfer did not satisfy a scenario where an application could be made to APRA for approval, and as such no section 145 form was necessary.

12. The Applicant is seeking an internal review of the decision made by the FOI Officer on 19 March 2015. I have reviewed all relevant documentation and the process of investigation undertaken by the FOI Officer. APRA does not require the form in the circumstance of the FOI request, and no such application was made.
13. For the reasons outlined above, I consider that the document relevant to the Applicant's request was not used in this circumstance. I am satisfied that APRA has taken all reasonable steps to locate documents relevant to the FOI Request, and that no relevant documents exist. Accordingly, I have decided to refuse access, under subsection 24A(1)(b)(ii), to these document.

### ***ADVICE TO APPLICANT AS TO RIGHTS OF REVIEW***

#### ***Application for review by Information Commissioner***

14. 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.
15. 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.
16. An application for review by the Information Commissioner should be sent:
  - Online: [www.oaic.gov.au](http://www.oaic.gov.au);
  - Post: GPO Box 2999, Canberra ACT 2601
  - Fax: +61 2 9284 9666
  - Email: [enquiries@oaic.gov.au](mailto: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***

17. 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.
18. 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 \$777, 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***

19. 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.

20. 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](mailto:enquiries@oaic.gov.au)
- GPO Box 2999, Canberra ACT 2601
- website at [www.oaic.gov.au](http://www.oaic.gov.au)



**David Sullivan**  
**Senior Manager Advice & Drafting, Legal**  
**Australian Prudential Regulation Authority**

Date: 28/4/15

**s 24A Freedom of Information Act 1982**

**24A Requests may be refused if documents cannot be found, do not exist or have not been received**

*Document lost or non-existent*

(1) An agency or Minister may refuse a request for access to a document if:

(a) all reasonable steps have been taken to find the document; and Access to documents **Part III**  
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(b) the agency or Minister is satisfied that the document:

- (i) is in the agency's or Minister's possession but cannot be found; or
- (ii) does not exist.

*Document not received as required by contract*

(2) An agency may refuse a request for access to a document if:

(a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and

(b) the agency has not received the document; and

(c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.