



Australian
Competition &
Consumer
Commission

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7 May 2015

Mr Scott Bridges

Via email to: foi+request-1012-30b01ce8@righttoknow.org.au

Dear Mr Bridges

Request for access under the *Freedom of Information Act 1982*

I refer to your email of 10 March 2015 in which you request access, under the *Freedom of Information Act 1982* (the FOI Act), to the following:

'Documents and correspondence (including, but not limited to, emails, phone transcripts, reports, briefs, meeting notes) between the ACCC and Andrew Laming MP and/or his office, generated between 1 December 2014 and 10 March 2015, regarding Halal and/or religious food certification or related issues.'

I attach a Schedule of documents (Attachment A), which sets out my final decision in relation to the documents relevant to your request.

In relation to the Schedule, please note:

- (a) Column 1 of the Schedule refers to each document by a document number created for the purpose of processing this request;
- (b) Column 2 of the Schedule gives, where applicable, the name and organisation of the author of the document as informed by the face of the document;
- (c) Column 3 of the Schedule gives, where applicable, the name and organisation of the addressee of the document as informed by the face of the document;
- (d) Column 4 of the Schedule shows the date appearing on the face of each document;
- (e) Column 5 of the Schedule briefly describes the document or, where applicable, each part of a composite document;
- (f) Column 6 of the Schedule gives the number of folios comprising the document or, where applicable, each part of a composite document;
- (g) Column 7 of the Schedule indicates my decision on whether, and what form, access has been granted to the document, where applicable;

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- (h) Column 8 of the Schedule sets out my findings on material questions of fact and the reasons for my decision.

The material and evidence on which my findings are based is the material contained in the document, the context provided by the file in which the document is located and the subject matter of the request.

Please also note that the FOI Act does not require the grant of access to documents that are 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 documents available for purchase by the public in accordance with arrangements made by an agency.

I, William Herron, as an authorised officer of the ACCC for the purposes of section 23 of the FOI Act, am able to make decisions concerning granting, deferring or refusing access to documents and to delete matters from documents prior to granting access.

As stated in my letter to you dated 28 April 2015, I have decided to waive the charges associated with processing this FOI request on public interest grounds.

Enclosed are copies of the 2 documents which were 'Granted' as per the Schedule.

Pursuant to s.11C of the FOI Act, a decision must be made as to whether the information released in response to an FOI access request should be published on an Agency's Disclosure Log on its website. Section 11C recognises that publication of personal, business and other information may be unreasonable.

I have made the decision that the disclosure requirement applies, and that the documents released in full should be published on the ACCC's Disclosure Log.

Your Rights of Review of the decision are described in Attachment B to this letter.

Yours sincerely



William Herron
FOI Coordinator
ACCC Legal Group

ATTACHMENT A
Schedule of documents

Doc No	Author	Addressee	Date	Description	No of folios	Access	Findings, Reasons and Brief Description
1	Nigel Ridgway ACCC	Sharon Clancy ACCC	18.2.2015	Email Halal certification may be reduced by 75%	2	Granted	
2	Sharon Clancy ACCC	Andrew Laming Member for Bowman	13.3.2015	Email Letter from ACCC - Indonesian Council of Ulama and Halal certification plus attachment	3	Granted	

ATTACHMENT B

INFORMATION ON RIGHTS OF REVIEW

1. INTERNAL REVIEW

Section 54 of the Freedom of Information Act gives you the right to apply for an internal review of the decision refusing to grant access to documents or if you disagree with a decision of an Australian Government agency under the *Freedom of Information Act 1982* (the FOI Act). If you make an application for review, an officer of the ACCC will be appointed (not the person who made this decision) to conduct a review and make a completely fresh decision on the merits of the case.

Application for a review of the decision must be made in writing within 30 days of receipt of this letter.

You do not have to pay any other fees or processing charges for an internal review, except for providing access to further documents released as a result of the review (for example, photocopying, inspection etc).

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 changed.

Application for a review of the decision should be addressed to:

The FOI Officer
Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601

If you make an application for internal review and a decision is not made by us within 30 days, the original decision is considered to be affirmed.

2. REVIEW BY THE INFORMATION COMMISSIONER

You may ask for a review of a decision by the Office of the Australian Information Commissioner (OAIC). You do not have to go through the agency's internal review process first for this process, but if you do choose to seek an internal review, you can still seek OAIC review for the internal review decision, if access is refused.

You must apply in writing and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 5218, Sydney NSW 2001

Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au

If you disagree with the Information Commissioner's review decision you can appeal to the Administrative Appeals Tribunal (AAT).

The Tribunal is a completely independent review body with the power to make a fresh decision. Your application should be accompanied by a filing fee of \$861.00 (as at July 2014), unless you are granted legal aid or you come within a exempt category of persons (check with the Tribunal registry in your State). The 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.

3. COMPLAINT TO THE OAIC

Pursuant to section 70 of the Act, you may request the OAIC to investigate action taken by the ACCC in relation to your Freedom of Information request. There is no fee for making a complaint. The OAIC will consider your complaint and, if appropriate, conduct an investigation into it or transfer the complaint to the Commonwealth Ombudsman. Any investigation will be completely independent.

You may complain to the OAIC either orally or in writing. The OAIC's contact details are indicated above.

From: Ridgway, Nigel
Sent: Wednesday, 18 February 2015 4:13 PM
To: Clancy, Sharon; Heys, Nick
Cc: Phillips, Davin
Subject: FW: Halal certification may be reduced by 75% [SEC=UNCLASSIFIED]

Hi Sharon and Nick

The competition issue flagged by Andrew Laming MP relates to the October 2013 News article linked below.

Would appreciate your preliminary views.

Kind regards
Nigel

Nigel Ridgway

Executive General Manager | Consumer, Small Business and Product Safety Division
Australian Competition & Consumer Commission
| 23 Marcus Clarke Street Canberra 2601 | <http://www.accc.gov.au>
T: +61 2 6243 1223 | M: +61 0400 311 280 (optional) |



Please consider the environment before printing this email

From: Laming, Andrew (MP) [<mailto:Andrew.Laming.MP@aph.gov.au>]
Sent: Monday, 19 January 2015 10:56 AM
To: Carlini, Sophia (Executive Office)
Cc: Edwards, Fiona (A. Laming, MP)
Subject: FW: Halal certification may be reduced by 75%

Gents,

Thanks for considering a couple of points about Halal.

1 I support the position that halal certification is a private matter and I seek no changes to that process. I also understand that payments to religious organisations for international market access is unavoidable.

For our domestic market however, I seek a **separation** of ingredient certification and religious certification. This would allow a 'halal ingredient' claim to be made without cost, under *Australia New Zealand Food Standards Code*, a legislative instrument under the *Legislative Instruments Act 2003*.

'All ingredients are halal' claims are no different to 'made in' or 'product of.' Food manufacturers should have the option of a simple ingredient claim under the above Code. Additional religious certification is a private matter.

2 Are there possible breaches of the Competition and Consumer Act by halal providers <http://www.news.com.au/national/aussie-firms-paying-inflated-price-to-have-halal-certification/story-fncynjr2-1226743120181> Would any of the conduct in this article been of interest to the ACCC?

Petreski, Sonya

From: Clancy, Sharon
Sent: Friday, 13 March 2015 9:47 AM
To: 'andrew.laming.mp@aph.gov.au'
Cc: Bezzi, Marcus
Subject: Letter from ACCC - Indonesian Council of Ulama and Halal certification [SEC=UNCLASSIFIED]
Attachments: ACCC letter to Dr Andrew Laming MP - MUI.pdf

Dear Dr Laming

Please find attached a letter from the ACCC in response to your query regarding the Indonesian Council of Ulama and Halal certification.

Regards

Sharon

Sharon Clancy
Assistant Director | Enforcement Coordination
Australian Competition & Consumer Commission
23 Marcus Clarke Street Canberra ACT 2601 <http://www.accc.gov.au>
T: +61 2 6243 1217



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13 March 2015

tel: (02) 6243 1111
fax: (02) 6243 1199

Dr Andrew Laming MP
Member for Bowman
PO Box 8024
Cleveland QLD 4163

www.accc.gov.au

Email: andrew.laming.mp@aph.gov.au

Dear Dr Laming

Indonesian Council of Ulama – Halal certification

On 19 January 2015 you spoke by telephone with my colleagues from the Australian Competition and Consumer Commission (ACCC), Deputy Chair Michael Schaper and Nigel Ridgway, Executive General Manager, Consumer, Small Business and Product Safety.

During the meeting you referred to a news.com.au article dated 18 October 2013 and titled *Aussie firms paying inflated price to have Halal certification*. You asked the ACCC to consider if the circumstances described in the article raise any issues under the *Competition and Consumer Act 2010* (the Act).

Based on the available information, the ACCC's view is that, if the Act were to apply to the Indonesian Council of Ulama (MUI), it is possible that the MUI may have engaged in conduct in breach of the misuse of market power and resale price maintenance provisions of the Act.

However the ACCC does not propose to pursue this matter further because:

- MUI is an Indonesian organisation and it is not clear that MUI is carrying on business in Australia and is obliged to comply with the provisions of the Act.
- The article was published in October 2013 and the ACCC is not aware of more recent concerns about the issues raised in the article.
- The article suggests that the Department of Agriculture intended to resolve the matter as a trade issue.

In assessing this matter, the ACCC has liaised with colleagues at the Indonesian competition authority, the Komisi Pengawas Persaingan Usaha (KPPU) who have advised that MUI is regarded as a religious council, rather than a business, in Indonesia.

Even if it were clear that the MUI was bound by the Act, there are legal and other practical difficulties involved with an Australian enforcement agency seeking a change in conduct by an Indonesian religious body, or even prosecuting such a body.

The alleged conduct

On the basis of the information in the article, it appears that MUI suspended at least one of its approved Australian certifiers of Halal meat because that certifier charged below the minimum certification fees set by MUI.

ACCC analysis

Section 46 of the Act prohibits the misuse of market power for a proscribed anti-competitive purpose. These purposes are:

- eliminating or substantially damaging a competitor
- inducing the exit or preventing the entry into the market by (potential) competitors
- deterring or preventing competitive conduct by competitors.

As a body that approves Halal certifiers for the purpose of meat imports to Indonesia, it is arguable that MUI has a degree of market power. Through its suspension of the certifier, it is possible that MUI has taken advantage of its market power for the purpose of deterring or preventing the certifier from engaging in competitive conduct in a market.

Section 48 of the Act prohibits resale price maintenance. In particular, suppliers are prohibited from:

- specifying a price that resellers are likely to understand as the price below which goods or services should not be sold or advertised
- withholding supply to a reseller because the reseller had refused or failed to comply with the specified minimum price.

It is possible that, by specifying a minimum certification fee, MUI may have engaged in resale price maintenance, but only if it is bound by Act.

For the reasons set out earlier in this letter and assuming that MUI is bound by the Act, while it is possible that MUI may have engaged in conduct in breach of the Act, the ACCC does not propose to pursue this matter further.

To the extent that this matter raises issue about the trade relationship between Australia and Indonesia, it may be better pursued by the Department of Foreign Affairs and Trade.

I trust this information is of assistance and thank you for raising your concerns with the ACCC.

Should you wish to discuss this matter further, please do not hesitate to contact me on (02) 9230 9130.

Yours sincerely



Marcus Bezzi
Executive General Manager
Competition Enforcement