



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Office address (inc courier deliveries):
Level 7, 120 Collins Street,
Melbourne VIC 3000

Mail address for Melbourne office:
GPO Box 9827,
Brisbane QLD 4001

Tel: +61 1300 935 075

Fax: +61 1300 729 000

www.asic.gov.au

22 May 2023

Me

By email: foi+request-10283-5373c360@righttoknow.org.au

Freedom of Information Request No. 076-2023

I refer to your request for access to documents made under the *Freedom of Information Act 1982 (FOI Act)* dated 7 May 2023 by which you requested access to documents in the possession of the Australian Securities and Investments Commission (**ASIC**).

Your request sought access to the following:

"Please provide documents that list directors that have been:

- 1. Disqualified under s206B(1)(b)(ii) of the Corporations Act*
- 2. Not registered as directors in the first place because they fail s206B(1)(b)(ii) of the Corporations Act"*

I am the authorised decision-maker for the purposes of section 23 of the Act and this letter gives notice of my decision.

On 11 May 2023 I issued you a notice under section 24AB of the FOI Act advising that a practical refusal ground existed in relation to your request for documents. The notice advised you that your request did not adequately identify the documents sought. The notice provided you with the opportunity to revise your request and provided suggestions on how to do so.

On 11 May 2023 you responded and revised the scope of your request as follows:

"Could I amend my request such that it relates to Corporations Act 2001 (Cth) s 206B(1)(b)(ii). That is, automatic disqualification from managing a corporation if convicted of an offence involving dishonesty."

On 15 May 2023 I wrote to you as follows:

"...

Can you please advise whether you are seeking access to a single document containing a list of the two requested categories of information or alternatively, existing documents held by ASIC that list the information requested?

ASIC does not ordinarily capture or report on data relating to disqualifications under section 206B(1)(b)(ii) of the Corporations Act 2001. However, most matters prosecuted criminally will trigger a section 206B(1)(b)(ii) disqualification. For this reason, I suggest

that you revise the scope of your request to a list of successful criminal convictions and the corresponding ASIC media release reference number. You will be able to access the media releases by reference number on the ASIC website.

Revising your request as suggested would remove the practical refusal ground..."

On 16 May 2023 you responded as follows:

*"...
I would like to know how many directors / office holders were (1) refused at first instance under a 206B(1)(b)(ii), and (2) were struck off when a relevant conviction for s 206B(1)(b)(ii) occurred.*

What is the best way to phrase that request?

Possibly in addition, I would like the one most current and relevant internal policy document that sets out what ASIC does if/when it becomes aware of a s 206B(1)(b)(ii) conviction against an office holder..."

I have taken your email of 16 May 2023 to be your revised request for the purposes of the s24AB notice issued on 11 May 2023.

Decision

A search of ASIC's records was conducted. My decision is to refuse your request as the documents do not exist. The reasons for my decision are set out below.

Information considered

In reaching my decision, I have considered the following:

- the FOI Act, in particular, s 24A;
- the results from document searches undertaken by relevant ASIC staff;
- the Australian Information Commissioner's FOI Guidelines issued under s 93A of the FOI Act (**FOI Guidelines**); and
- the terms of your request.

Section 24A of the FOI Act

Section 24A of the FOI Act relevantly provides:

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

(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.

Part 1 of your revised request seeks access to data identifying how many directors or officeholders were refused at first instance under s206B(1)(b)(ii) of the Corporations Act or were struck off when a relevant conviction for s206B(1)(b)(ii) occurred. The information that you seek is not held by ASIC in a discrete form and is not capable of being produced by the use of a computer 'ordinarily available' to ASIC within the meaning of s17(1)(c)(i) of the FOI Act.

Part 2 of your revised request seeks access to the most recent and relevant policy document held by ASIC setting out what ASIC does when it becomes aware of a s206B(1)(b)(ii) conviction against an officeholder. ASIC does not hold any relevant policy document which specifically addresses ASIC's procedures when it becomes aware of a s206B(1)(b)(ii) conviction. In coming to this view, I have consulted with staff in ASIC's Chief Data & Analytics Office (CDAO).

I am satisfied that the documents you seek are not held by ASIC. Accordingly, my decision is to refuse your request for access to documents under section 24A(1)(b)(ii) of the FOI Act on the basis that all reasonable steps have been taken to find documents falling within the scope of your request and I am satisfied that no such documents exist.

Review rights

In the event that you are dissatisfied with the decision:

1. You may, within 30 days after the day on which you have been notified of this decision, apply in writing to ASIC for an internal review of my decision under section 54B of the FOI Act. This review is an independent process conducted by a Senior Freedom of Information Officer at ASIC. This request should be addressed to me or to the Senior Manager, Freedom of Information, GPO Box 9827, Brisbane QLD 4001 or by email to foirequest@asic.gov.au.
2. You may within 60 days after the day on which you have been notified of this decision, apply in writing to the Office of the Australian Information Commissioner (OAIC) for a review of my decision under section 54N of the FOI Act. You may contact the OAIC by post at GPO Box 5218 Sydney NSW 2001, by email at foidr@oaic.gov.au or by telephone on 1300 363 992.

Right to complain

You may lodge a complaint with the OAIC in relation to the conduct of ASIC in the handling of this request. You may contact the OAIC as set out above.

If you have any questions or wish to discuss, please contact me at Monique.Lindridge@asic.gov.au or on 0466 290 017.

Yours sincerely,



Monique Lindridge

(Authorised decision maker under section 23(1) of the FOI Act)