

Our ref: FOI-2015-50011

13 April 2015

Mr Phillip Sweeney
12 Highland Way
HIGHTON VIC 3216

Dear Mr Sweeney

Your Freedom of Information (FOI) request dated 31 March 2015

I refer to your email received by the Ombudsman's office on 31 March 2015, in which you sought access to certain documents under the *Freedom of Information Act 1982* (the FOI Act). Your request was framed in the following way:

'...One of the outcomes of the Senate Economics Reference Committee investigation into ASIC last year was the referral of allegations made by John Wheeldon that a subsidiary company of the National Australia Bank MLC Ltd, had corruptly or otherwise inappropriately influenced ASIC to grant special relief so that MLC was not required to include "fees and charges" in its superannuation calculator that MLC uses to market its superannuation products.

Competitor "Industry Funds" do not impose these "fees and charges", since they are "not-for-profit" funds.

The document I seek is a copy of any final or interim report produced by the Commonwealth Ombudsman in relation to this matter.

If such a report has yet to be released by the Commonwealth Ombudsman, then I seeking a copy of any correspondence with any Senator or Department that would indicate the anticipated release date of this report...'

This letter constitutes notice of my decision on your request for access. I am authorised to make decisions on behalf of our office under section 23 of the FOI Act.

Decision

Your email asks for access to a (draft or final) report by this office about a Senate Economics Reference Committee investigation concerning the Australian Securities and Investments Commission (ASIC), or any correspondence indicating possible timing of the release of such a report. A search of the records held in this office has failed to locate any documents falling within the scope of your request.

We have searched our records for any documents this office may hold that would fall within the scope of your request. We have searched for any email correspondence, letters, and draft or final reports which would meet the description of the documents you seek. Having not located any relevant documents, I am satisfied that no documents within the scope of your request exist.

Subsection 24A(1) of the FOI Act permits refusal of a request for access to a document where all reasonable steps have been taken to find the document and the agency or Minister is satisfied that the document does not exist. Having regard to the outcome of our searches for relevant documents, I have decided to refuse your request under subsection 24A(1) of the FOI Act.

In reaching my decision, I took the following things into account:

- Your correspondence outlining the particulars of your request
- The FOI Act, and
- Relevant Guidelines issued by the Australian Information Commissioner.

Review rights

Review by the Australian Information Commissioner

You may apply to the Office of the Australian Information Commissioner (OAIC) to review my decision. The Australian Government announced as part of the 2014-15 Budget that the OAIC would be disbanded from 31 December 2014. However, legislation to give effect to this change was not considered by the Senate before the end of the 2014 sitting period. At this stage, Information Commissioner reviews can still be lodged with the OAIC.

If the OAIC does not think it can complete a review, it may deal with the matter under s 54W(b) of the FOI Act. Under s 54W(b) of the FOI Act, the OAIC may finalise an Information Commissioner review by deciding that it is desirable in the interests of the administration of the FOI Act that the matter be reviewed instead by the Administrative Appeals Tribunal (AAT). If this occurs, the applicant can apply to the AAT in accordance with normal AAT procedures.

An application for review by the Information Commissioner must be made in writing, and be lodged in one of the following ways:

- online at <https://forms.australia.gov.au/forms/oaic/foi-review/>
- via email to enquiries@oaic.gov.au
- by overland mail to GPO Box 2999, Canberra ACT 2601
- in person to Level 2, 175 Pitt Street, Sydney NSW.

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews.

Complaints to the Commonwealth Ombudsman

You may make a complaint to this office if you are dissatisfied with the manner in which we have processed your request. The Ombudsman will arrange for an independent consideration of your complaint, and ensure that the matter is handled by a person who has not had prior involvement with your FOI request.

You may complain to this office in writing using the contact information set out at the top of this letter. There is no fee for making a complaint.

Contacts

If you require clarification of any of the matters discussed in this letter you should contact me on 1300 362 072.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Parkhurst'.

Gregory Parkhurst
FOI Co-ordinator