**Australian Securities
and Investments Commission**

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(Not the real) Bob Neil
By email: foi+request-10460-
a7f87f6d@righttoknow.org.au

Our Reference: FOI 136-2023

11 August 2023

Dear Sir/Madam

Freedom of Information Request No. 136-2023
Notice of Access Decision

I refer to your request dated 12 July 2023 under the *Freedom of Information Act 1982* (**FOI Act**) in which you seek access to documents in the possession of the Australian Securities and Investments Commission (**ASIC**).

Your request seeks access to the following:

> '*I write to seek access to documents under the Freedom of Information Act 1982 (Cth).*
>
> *I seek access to documents containing:*
>
> *1. any agenda item, minute, or record of proceedings relating to a formal resolution of the Commission to adopt a policy of refraining from investigating allegations of criminal offences, created under legislation that ASIC administers;*
>
> *2. any agenda item, minute, or record of proceedings of the ASIC Commission Committees or ASIC Management Committees relating to an ASIC policy of refraining from investigating allegations of criminal offences, created under legislation that ASIC administers;*
>
> *3. any instrument of delegation which confers a discretion upon an employee or officer of ASIC to decide whether to investigate, or refrain from investigating, allegations of criminal offences created under legislation that ASIC administers.*
>
> *I am content to receive any such documents in electronic form.*

Please contact me promptly if the scope of this request will require extensive search or review such as to delay provision of access to the documents until more than 30 days after the date of this request, so as to discuss any potential refinement of the request, or the possibility of access being granted in phases.'

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

Parts 1 and 2 of your request - Decision and reasons for the decision

I have conducted a search in response to your request and have found no documents falling within the terms of Parts 1 and 2 of your request were identified. As a result, your request is refused in line with paragraph 24A(1)(b)(ii) of the FOI Act, which provides:

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

(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.

1. any agenda item, minute, or record of proceedings relating to a formal resolution of the Commission to adopt a policy of refraining from investigating allegations of criminal offences, created under legislation that ASIC administers;

2. any agenda item, minute, or record of proceedings of the ASIC Commission Committees or ASIC Management Committees relating to an ASIC policy of refraining from investigating allegations of criminal offences, created under legislation that ASIC administers;

A document does not exist within the terms of Parts 1 and 2 of your request that "refrains" ASIC from investigating allegations of criminal offences. ASIC does not have a policy of "refraining from investigating allegations of criminal offences, created under legislation that ASIC administers".

My decision is therefore to refuse your request for access to documents under section 24A of the FOI Act on the basis that all reasonable steps have been taken to find the document(s) that fall within the scope of your request. I am satisfied that the document(s) do not exist. I have therefore decided to refuse your request pursuant to section 24A(1)(b)(ii) of the FOI Act.

Part 3 of your request - Decision and reasons for the decision

I have identified one document which comes within the terms of your request. The document was identified by the Commission Counsel team within Legal Services on 2 August 2023. The document was located on ASIC's internal record management system (Sharepoint) through ASIC's delegations, authorisations and appointments register. A document was located in relation to ASIC's delegation of its functions and powers under s 102 of the *ASIC Act 2001*.

I advise that I have decided to grant access in full to the document. The document is enclosed with this letter.

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 enquiries@oaic.gov.au or by telephone on 1300 363 992.

Right to complain

3. 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 krystal.fung@asic.gov.au.

Yours sincerely,

Krystal Fung
(Authorised decision maker pursuant to subsection 23(1) of the FOI Act)
For the Australian Securities and Investments Commission