



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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(Not the real) Bob Neil
By email only: [foi+request-10461-
9ba3c548@righttoknow.org.au](mailto:foi+request-10461-9ba3c548@righttoknow.org.au)

Our Reference: FOI 135-2023

18 July 2023

Dear (Not the real) Bob Neil

Acknowledgement of request and notice of decision – FOI request 135-2023

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 ASIC.

Your request seeks access to:

*all documents held on file by ASIC relating to the following ASIC
correspondence:*

1. ASIC reference - CAS-108393-B7F6N6
2. ASIC reference - CAS-81952-H0Y1X6

This letter acknowledges your FOI request and gives notice of my decision.

Decision and reasons for decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions about FOI requests.

I have determined that under section 25(1)(a) of the FOI Act, I can neither confirm nor deny that documents of the type you have requested exist in ASIC's records.

I have taken the following material into account in making my decision:

- the FOI Act (specifically sections 25, 26 and 37(1)); and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **FOI Guidelines**).

Section 25 – Information as to existence of certain documents

Section 25 of the FOI Act states that:

(1) Nothing in this Act shall be taken to require an agency or Minister to give information as to the existence or non-existence of a document where information as to the existence or non-existence of that document, if included in a document of an agency, would cause the last-mentioned document to be:

(a) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1);

(2) If a request relates to a document that is, or if it existed would be, of a kind referred to in subsection (1), the agency or Minister dealing with the request may give notice in writing to the applicant that the agency or the Minister (as the case may be) neither confirms nor denies the existence, as a document of the agency or an official document of the Minister, of such a document but that, assuming the existence of such a document, it would be:

(a) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1)

The Information Commissioner notes in the FOI Guidelines at 3.105 that:

'The agency or minister does not have to search for or conduct an inquiry into the nature of the document being sought. Rather, s 25(2) requires only an assessment of whether a document of the kind requested is, or would be, an exempt document under ... [section] 37(1) (documents affecting enforcement of law and protection of public safety) ...'

I have considered the material that may be contained in documents that fall within the scope of your request and I have determined that any such documents, if they existed, could reasonably be expected to be exempt under section 37(1)(b) of the FOI Act. This is on the basis that if ASIC confirmed the existence, their release would disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law.

Section 37 – Documents affecting enforcement of law and protection of public Safety

Section 37(1) provides that a document is an exempt document if its disclosure would, or could reasonably be expected to:

(b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law

I am satisfied that if ASIC was in possession of documents falling within the scope of your request; any relevant documents would be exempt under section 37(1)(b) of the FOI Act.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision.

Internal review

You may apply for an internal review of my decision. This must be in writing and can 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. The internal review application must be made within 30 days of this letter.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged by smartform on their website or in one of the following ways:

email: foidr@oaic.gov.au

post: GPO Box 5218 Sydney NSW 2001

Right to complain

You may complain to the OAIC at the contact details above about the conduct of ASIC in the handling of this request.

If you have any questions about this decision, please contact me at fiona.crowe@asic.gov.au

Yours sincerely



Fiona Crowe
Authorised decision maker under s23(1) of the FOI Act