



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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Mr P.C Sweeney
By email: [foi+request-10633-
a21a371b@righttoknow.org.au](mailto:foi+request-10633-a21a371b@righttoknow.org.au)

Our Reference: FOI 178-2023

29 September 2023

Dear Mr P.C Sweeney

Freedom of Information Request No. 178-2023
Notice of Access Decision

I refer to your request dated 30 August 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:

"The document or documents I seek is/are any correspondence from AFCA to ASIC that makes mention of NULIS Nominees (Aust) Ltd making benefit payments to FEMALE fund members from the Trust Estate (fund) constituted and established for MALE staff by the original Trust Deed made on 23 December 1913 (which would be prohibited as confirmed by two enactments of the Parliament of South Australia)". The search period referenced is from 20 May 2021.

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

Information considered:

In reaching my decision, I have considered the following:

- the FOI Act, in particular s 24A;
- the Australian Information Commissioner's FOI Guidelines issued under s 93A of the FOI Act (**FOI Guidelines**);
- the terms of your request; and

- the details of the searches conducted by ASIC staff.

Decision and reasons for the decision

Section 24A of the FOI Act

Section 24A of the FOI Act, 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.

The FOI Guidelines relevantly provide:

Agencies and ministers should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency's operating environment or the minister's office. At a minimum, an agency or minister should take comprehensive steps to locate documents, having regard to:

- *the subject matter of the documents;*
- *the current and past file management systems and the practice of destruction or removal of documents;*
- *the record management systems in place;*
- *the individuals within an agency or minister's office who may be able to assist with the location of documents, and*
- *the age of the documents.*¹

I searched ASIC's systems for files related to Nulis Nominees (Aust) Pty Ltd. I found no documents falling within the scope of your request. I am satisfied the documents do not exist.

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

¹ FOI Guidelines [3.89].

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.

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.

Yours Sincerely

A handwritten signature in black ink that reads "Chloe Pugsley". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Chloe Pugsley

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