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04 July 2024

[www.accc.gov.au](http://www.accc.gov.au)

Compliance Associate (Right to Know)

**Sent via email: [foi+request-11551-b9caa1de@righttoknow.org.au](mailto:foi+request-11551-b9caa1de@righttoknow.org.au)**

Dear Compliance Associate

**Notice of intention to refuse access because a practical refusal reason exists – insufficient information provided – ACCC cannot identify requested documents**

I refer to your email of 22 June 2024 in which you request access to documents relating to:

*I am requesting documents related CMC Markets Asia Pacific Pty Ltd, GFT Global Markets UK Limited, IG Markets Limited, Australian CFD Forum Limited and parties otherwise listed in Schedule 1 made December 2013.*

*In the submission a compliance plan was being developed by Ms. Jan Redfern PSM, former senior executive of ASIC and currently part time Senior Member of the Administrative Appeals Tribunal and the Guardianship Tribunal and independent governance and regulatory compliance consultant, to assist them in relation to a proposal to establish a CFD industry body and best practice standards for the Australian CFD industry.*

*Please provide documents about industry best practices and compliance plans created by Jan Redfern.*

***Additionally documents about Trio Capital and fraud and the need John Hempton to Treasury to use only arrangements like Citco as custodian of client assets and strongly critical of the typical brokerage and clearing arrangements used by typical Hedge Funds.***

The ACCC is considering refusing your request insofar as it relates to the second part of your request (in bold above), as currently framed, under s.24 of the *Freedom of Information Act 1982* (Cth) (FOI Act) because a practical refusal reason exists.

The practical refusal reason is that the request does not provide enough information to enable the ACCC to identify the documents you are seeking.

Before making a final decision you have an opportunity to revise your request to provide sufficient information to enable us to identify the documents you are seeking.

This is called the 'request consultation process'. Before **18 July 2024**, you must either:

- revise your request,
- tell us that you do not wish to revise your request, or
- withdraw your request.

If you do not respond in one of these ways in that timeframe your request is taken to be withdrawn.

### **What should you do**

I am the ACCC officer to contact to try to remove the ground for refusal. Please read the attached tips for success ([Attachment A](#)) and then email me via [xxx@xxxx.xxv.au](mailto:xxx@xxxx.xxv.au) to make a time to discuss your request. I am happy to help you to revise your request to remove the practical refusal ground.

To help us develop a better understanding of the documents you are seeking, before contacting us please consider;

- whether the ACCC is the correct agency to direct the second part of your FOI request to.
- reframing the scope of the second part of your request or clarifying what documents you are seeking. It is unclear what you mean by "...the need John Hempton to Treasury to use only arrangements like Citco....".

I strongly encourage you to contact me before submitting a revised request. Once you submit a revised request, the request consultation process ends and we will make a decision regarding whether the practical refusal ground still exists based on the terms of your revised request. Even if you modify your request, the practical refusal reason may still exist or we may need further time to process your revised request. This will depend upon the terms of your final request.

If you need more time to respond, please contact me within the 14 day period to discuss your need for an extension of time.

During this period of consultation, the statutory timeframe for the processing of your request is on hold.

I have also attached an extract from the FOI Act for your information ([Attachment B](#)).

Yours sincerely



Rebecca Fenech  
FOI Manager  
ACCC Legal Group

Sent by email 4/07/2024

# Attachment A

## Tips for success

It would assist us if you were able to clearly identify the specific documents you are after, or clarify what information you are seeking.

Please consider if we are the agency that has the document you seek.

- The ACCC does not hold documents such as medical records, phone bills or police records. To access this material, contact your medical practitioner or the relevant hospital, telecommunication provider or local police force.
- The *Freedom of Information Act 1982* (FOI Act) only applies to Commonwealth Government agencies. Each agency processes their own FOI requests and has their own FOI section. You will need to contact the relevant agency directly to enquire how you can make an FOI request to them.
- Each State has separate freedom of information law. If you are seeking information from a State Government, you will need to contact the relevant State agency directly to enquire how you can make an FOI request to them.

Framing the scope of your request using the below suggestions will assist us to identify the document/s you are seeking, and may also assist in removing any practical refusal reasons.

- Limit your request to one or two dot points.
- Choose a specific category of documents (i.e. final documents, file notes, email correspondence or reports). Requesting 'all documents' in relation to a matter or issue may lead to a practical refusal reason
- Choose a specific date or date range (i.e. a final document dated 5 June 2019 or final documents created between 1 June 2019 and 30 June 2019). Too broad a date range may result in a practical refusal reason
- Limit your request to documents about a specific issue in relation to a specific matter (i.e. correspondence between the ACCC and (name of company or person) addressing why they consider the conduct was not unlawful). Requesting 'all documents' in relation to a matter or issue may lead to a practical refusal
- Be clear about what you **don't** want (i.e. hardcopy documents, publicly available material, duplicates, copies of your own correspondence).
- Exclude third party identifying material if you can, to minimise our need to consult such parties on your request.

### **Example FOI request:**

*'I request, under the FOI Act, final reports and file notes relating to x matter, in the period 1 July 2019 to 30 July 2019.*

*I am not seeking copies of internal correspondence, draft documents or publicly available documents.'*

# Attachment B

## Extracts of the Freedom of Information Act

### 15 Requests for access

#### *Requirements for request*

- (2) The request must:
- (a) be in writing; and
  - (aa) state that the request is an application for the purposes of this Act; and
  - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and**
  - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).

### 24AB What is a *request consultation process*?

- (1) This section sets out what is a **request consultation process** for the purposes of section 24.

#### *Requirement to notify*

- (2) The agency or Minister must give the applicant a written notice stating the following:
- (a) an intention to refuse access to a document in accordance with a request;
  - (b) the practical refusal reason;
  - (c) the name of an officer of the agency or member of staff of the Minister (the ***contact person*** ) with whom the applicant may consult during a period;
  - (d) details of how the applicant may contact the contact person;
  - (e) that the period (the ***consultation period*** ) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

#### *Assistance to revise request*

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.

- (4) For the purposes of subsection (3), ***reasonable steps*** includes the following:

- (a) giving the applicant a reasonable opportunity to consult with the contact person;
- (b) providing the applicant with any information that would assist the applicant to revise the request.

*Extension of consultation period*

(5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

*Outcome of request consultation process*

(6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:

- (a) withdraw the request;
- (b) make a revised request;
- (c) indicate that the applicant does not wish to revise the request.

(7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:

- (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
- (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

*Consultation period to be disregarded in calculating processing period*

(8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

*No more than one request consultation process required*

(9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.