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22 July 2024

Compliance Associate (Right to Know)

www.accc.gov.au

Sent via email: foi+request-11551-b9caa1de@righttoknow.org.au

Dear Compliance Associate

I refer to your email of 22 June 2024 in which you request access to documents relating, under the *Freedom of Information Act 1982* (Cth) (the Act), to:

[Part 1]

'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.'

[Part 2]

'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.'

Withdrawal of freedom of information request

Our letter of 4 July 2024 gave notice under s.24AB(2) of the Act and advised you of our intention to refuse your request, insofar as it related to 'Part 2' of your request, because a practical refusal reason exists. You had 14 days (i.e. by 18 July 2024) to consult us in relation to your request and either:

- (a) withdraw your request;
- (b) make a revised request; or
- (c) indicate that you did not wish to revise the request.

As you did not respond as required, in accordance with s.24AB(7) of the Act, your request, insofar as it relates to 'Part 2' of your request, is now withdrawn.

Access refusal decision – documents do not exist

I have decided to refuse your request, insofar as it relates to 'Part 1' of your request, under s.24A(1) of the Act on the basis that the document does not exist.

I am authorised under s.23 of the Act to make this decision.

Reasons for decision

Section 24A(1) of the Act relevantly provides as follows:

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.
 - (ii) does not exist.**

Therefore, we may refuse a request for access to a document if we take all reasonable steps to find that document and we are satisfied that the document does not exist.

The ACCC took the following steps to locate the document:

- A thorough search of our databases to locate any information or documents that relate to your request
- Confirmation with relevant ACCC staff that worked on the matter at the time that no such document exists.
- A thorough search in the relevant matter workspace of our records management system by staff in the Mergers, Exemptions and Digital Division for documents matching, or similar to, the scope of the request provided by you.

Based on the nil results of these steps, I conclude that the requested document does not exist within the records of the ACCC.

Rights of review

Your rights of review are set out in Attachment A.

Further information

We have liaised with the relevant staff and they have provided some additional information in relation to the authorisation application – *Australian CFD Forum Limited & Ors – Authorisations – 91403 & A91404*.

- The application mentions that Ms Redfern was hired to advise them and that this evolved into the application.
- The application includes content that proposed compliance requirements for members and set out a number of standards.
- The application and the determination did not propose any formal compliance plan.

- These standards and the proposed compliance requirements are set out in the published application and published determination (<https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/australian-cfd-forum-limited-ors-authorisations-a91403-a91404>) .

Yours sincerely



Rebecca Fenech

FOI Manager
Specialist Advice and Services Division

Sent by email 22/07/2024

Attachment A

Information on rights of review

ACCC Internal Review

Under s.54 of the FOI Act, you can ask for an internal review of this decision. If you request an internal review request, another officer of the ACCC will review your request and make a new decision.

Timeframe for requesting internal review

You have 30 days from the receipt of this decision to request an internal review.

You may seek an extension to this timeframe with our agreement.

Is there a charge?

There is no charge payable for requesting an internal review.

Requesting an internal review

Your request for internal review must be in writing and indicate that you are seeking an internal review. You will need explain why this decision should be changed.

Please send your internal review request to the FOI Team by:

Email: foi@acc.gov.au

When will the decision be made?

We have 30 days from the receipt of your internal review request to make a decision.

If we do not make a decision within 30 days or such further period as the IC allows, the original decision is considered affirmed. In such circumstances, you can seek review of our deemed decision by the Information Commissioner.

Review by the Information Commissioner

You can ask for a review of this decision by the Australian Information Commissioner (IC). The Office of the Australian Information Commissioner (OAIC) encourages applicants to seek internal review first, however you are not required to go through our internal review process before seeking review by the IC. If you do choose to seek an internal review, you can still seek IC review of the internal review decision if we refuse access to your request.

Timeframe for requesting IC review

You have 60 days from the receipt of an access refusal decision to request IC review.

You may seek an extension to this timeframe from the OAIC.

Is there a charge?

There is no charge payable for requesting an IC review.

Requesting IC review

Your request for IC review must be in writing and include:

- your name and contact details
- a copy of the ACCC's decision that you disagree with (if you've received one)
- the reason(s) why you disagree with the decision

You can lodge your request for IC review online:

Online: <https://www.oaic.gov.au/contact-us#reviews>

Complaint to the Information Commissioner

You can request the Information Commissioner to investigate action taken by the ACCC in relation to this FOI request. The Information Commissioner will consider your complaint and, if appropriate, conduct an investigation. Any investigation will be completely independent.

Is there a charge?

There is no charge payable for making a complaint to the IC.

Lodging an IC complaint

You must lodge your complaint in writing and give a clear and brief description of each issue you're complaining about and what outcome you'd like.

You can lodge a complaint online:

Online: <https://www.oaic.gov.au/contact-us#complaints>