

Our reference: 33169/15



ASIC

Australian Securities & Investments Commission

18 September 2015

Ms Julie Simpson

By email: foi+request-1194-edff3b1f@righttoknow.org.au

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Dear Ms Simpson

Request for Internal Review under the *Freedom of Information Act 1982*

I refer to your email of 8 September 2015 in which you requested that ASIC conduct an internal review under section 54B of the *Freedom of Information Act 1982 (FOI Act)* in respect of our decision of 7 September 2015 (**Original Decision**).

In our Original Decision we refused access to documents which you requested in these terms:

"... a copy of any correspondence addressed to the Chairman of ASIC in relation to Deeds of a superannuation trust in the possession of ASIC that may assist Victoria Police with their inquiries that relate to a superannuation fund, once known as the Elders IXL Superannuation Fund and more recently as the AusBev Superannuation Fund. The search period is from 1 August 2015."

Decision

In processing your initial request, searches of ASIC's databases were conducted but did not reveal any documents that fell within the terms of your request. The Original Decision was therefore to refuse access to the requested documents on the basis the documents could not be found, or did not exist.

However, after receiving further guidance from you, we conducted additional searches and have now located two documents (with 10 attachments) that fall within the scope of your request.

No.	Document	Attachments	Date	Pages
1.	Letter emailed to Warren Day	7 attachments	27 Aug 2015	34
2.	Letter emailed to Warren Day	3 attachments	29 Aug 2015	53

I advise that I have decided not to release these documents on the grounds that the documents are exempt from release for the reasons set out in this letter.

Section 47F – Public interest conditional exemptions - personal privacy

The documents contain material which is conditionally exempt under section 47F of the FOI Act.

Section 47F provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person.

The personal information includes the names of third parties and the information that they have communicated to ASIC. The FOI Act sets out factors that must be considered when determining if disclosure would be unreasonable. These factors are as follows:

- (a) the extent to which the information is well known;
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- (c) the availability of the information from publicly accessible sources;
- (d) any other matters that the agency or Minister considers relevant.

I am satisfied that generally the personal information contained in the documents is not available from publicly accessible sources and that the information has little current relevancy.

I have also considered that although you are aware of the existence of these documents and the fact that they were provided to ASIC, the information they contain is not well known.

Following the consideration of the factors set out in the FOI Act and matters which I consider relevant set out above, I have determined that disclosure of the personal information would be unreasonable.

This exemption is subject to the public interest test.

Public interest

The FOI Act provides that access must be given to a conditionally exempt document unless in the circumstances access would on balance be contrary to the public interest.

As required by section 11A of the FOI Act, I have considered whether the release of conditionally exempt document would, on balance, be contrary to the public interest.

In particular, I have considered the following factors outlined in subsection 11B(3) as being factors favouring access to the document in the public interest:

1. Access to the documents would promote the objects of the FOI Act (including all matters set out in sections 3 and 3A).

I have considered the matters outlined in sections 3 and 3A which state that the FOI Act promotes disclosure of documents held by the Government of the Commonwealth.

2. Access to the documents would inform debate on a matter of public importance.

I have considered the content of the document and the outcome following receipt of the document and I do not consider that the disclosure would inform debate on a matter of public importance.

3. Access to the documents would promote effective oversight of public expenditure.

I do not find that disclosure of the documents would promote effective oversight of public expenditure.

4. Access to the documents would allow a person to access his or her personal information.

As your request is for documents containing communications between a third party and ASIC, the material does not contain your own personal information.

I find that, on balance, disclosure of the conditionally exempt documents would be contrary to the public interest. The public benefit that lies in disclosure is outweighed by the adverse effects on ASIC's operational activities and the unreasonable disclosure of personal information. Those adverse effects include prejudice to ASIC's operational abilities to gather intelligence from members of the public.

I find, therefore, that these documents are exempt from release under section 47F.

Section 22

Section 22 of the FOI Act provides that:

- where an agency decides not to grant access to a document on the ground that it is an exempt document; and
- it is possible for the agency to make a copy of the document with such deletions that the copy would not be an exempt document; and
- it is reasonably practicable for the agency, having regard to the nature and extent of the work involved in deciding on and making those deletions and resources available for that work, to make such a copy:

the agency shall, unless it is apparent from the request or as a result of consultation by the agency with the applicant that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.

I have considered whether, under section 22 of the FOI Act, it is possible to release the exempt documents with deletions such that the documents would no longer be exempt.

I am of the view that deletions to the documents would be so extensive that the exempt documents would be misleading and unintelligible. I am therefore satisfied that it is not practical to edit the documents for part release.

Appeal Rights

I provide you with the following information as required by the FOI Act.

In the event you are dissatisfied with the decision:

1. You may within 60 days after the day on which you have been notified of this decision, apply in writing to the Australian Information Commissioner for a review of my decision under section 54N of the FOI Act. Correspondence should be addressed to the Office of the Australian Information Commissioner at GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001.
2. You may lodge a complaint to the Commonwealth Ombudsman in respect to the conduct of ASIC in the handling of this request. To do so, you can contact the Ombudsman's office either: by e-mail to ombudsman@ombudsman.gov.au, by letter to GPO Box 442 Canberra ACT 2601, or by fax to (02) 6276 0123.

Yours sincerely



Leigh Coughlan

(Authorised internal reviewer under subsection 54(1) of the FOI Act)

For the Australian Securities and Investments Commission