



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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John Flymore

By email: [foi+request-11981-
d86ef37f@righttoknow.org.au](mailto:foi+request-11981-d86ef37f@righttoknow.org.au)

Our Reference: FOI 206-2024

1 October 2024

Dear Mr Flymore

**Freedom of Information Request No. 206-2024
Notice of Access Decision**

I refer to your request dated 1 September 2024 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:

"Under the Freedom of Information Act, I would like to request the number of enforcement actions taken due to public reports grouped by year. (Part 1)

If this is excessive, happy for this to be limited to 2018 and onwards.

Furthermore, I would like to know how many companies have had non-residential addresses corrected in their record. (Part 2)"

The FOI Guidelines explain:

"The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in discrete form.¹"

Given the above, I have taken your request to be for documents that reflect the requested information in your request.

Authority to make decision

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

Decision and reasons for decision

¹ FOI Guidelines [2.33]

I have conducted a search in response to your request and have found no documents falling within the terms of your request were identified. As a result, your request is refused in line with paragraph 24A(1)(b)(ii) of the FOI Act, which provides:

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

- the content of the document that falls within the scope your request;
- the FOI Act, specifically subsections 17 and 24A; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

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.

Searches were conducted for documents falling within the terms of your request by ASIC's Strategic Reporting team (Part 1) and Registry team (Part 2). The teams have advised that ASIC does not possess documents that fall into scope of the respective parts of the FOI request.

I note that under section 17 of the FOI Act, an agency is required to produce a written document of information that is stored electronically and not in a discrete written form if it does not appear from the request that the applicant wishes to be provided with a computer tape or disk on which the information is recorded.² Examples include a written compilation of information held across various agency databases, the production of a statistical report from an agency's dataset or in an agency computer system rather than in discrete form.

This obligation to produce only arises if ASIC is able to produce a written document containing the information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information (section 17(1)(c)(i)) and producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (section 17(2)).

I have found that the information you are seeking is not held in a discrete document by ASIC.

Part 1

The information that you are seeking in Part 1 can be derived from ASIC's Annual Reports. The ASIC annual performance statement provides a detail list of the types of actions that ASIC undertakes, by type of action (e.g., civil, criminal, administrative).

However, it would be an onerous exercise to go back and identify the source of each action, and identify whether it originated from a 'public report' or 'industry intelligence' etc. This is because ASIC has had system changes since 2018.

² FOI Guidelines [3.204] - [3.205]

To produce such a document, I would be required to examine each action individually to further qualify whether they are in scope of your request and from a 'public report'. As this is not considered "use of computers" as contemplated by section 17,³ it is not practicable to provide a responsive document in this manner.

Part 2

It appears that you are seeking a customised report in relation to address information obtained from ASIC's Companies Register. ASIC may only produce reports in relation to Registered Office addresses. Part 2 in its current form would be an onerous exercise and would not be practicable to be generated by "use of computers", further interrogation by the Registry team would be required.

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 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.

Further information – Part 2

The Registry team have advised that it may be possible to obtain certain address information from ASIC's Companies Register through a paid customised report prepared by ASIC's Information Access team. These requests are subject to approval.

Please note that where a document is publicly available for a **fee**, it is **excluded** from the operation of the FOI Act pursuant to section 12(1) of the FOI Act.

You may make your request by emailing the Information Access team at access.request@asic.gov.au

You should provide the following information when submitting your enquiry:

- Your full contact details (name, address, phone number and email address)
- Details of the organisation that you represent (if applicable)
- The information that you wish to acquire (e.g. *Form 484 Changes to company details*, or a *Form 492 Request for Correction*)
- The reason for your request
- The purpose/use for the information requested

The team will review your request and determine whether this information can be generated into a report. If a report can be generated, they will respond to you with a quote of the applicable charges to obtain the information requested.

Charges

The FOI Act provides that charges may be assessed for time spent processing a request. I have decided that there are no charges applicable to the processing of your request in this instance.

Review rights

In the event that you are dissatisfied with the decision:

³ FOI Guidelines [3.212] to [3.214]

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, Melbourne VIC 3001 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.

If you have any questions or wish to discuss, please contact me at krystal.fung@asic.gov.au.

Yours sincerely,

A handwritten signature in black ink that reads "Krystal Fung". The signature is written in a cursive, flowing style.

Krystal Fung
Lawyer, FOI & Privacy, Legal Services
(Authorised decision maker pursuant to subsection 23(1) of the FOI Act)
For the Australian Securities and Investments Commission