



Our reference: RQ16/00557

Ms Mirijana Soldatic  
FOI Coordinator  
Chief Legal Office  
Australian Securities and Investments Commission  
GPO Box 9827  
SYDNEY NSW 2001

Sent by electronic mail to: [FOIrequest@asic.gov.au](mailto:FOIrequest@asic.gov.au)

Dear Ms Soldatic

### Extension of time request under s 15AC

Thank you for your correspondence of 27 January 2016, in which you requested further time for the Australian Securities and Investments Commission (**ASIC**) to process a request for access to documents made by Mr Ben Fairless under the *Freedom of Information Act 1982* (Cth) (the **FOI Act**).

Mr Fairless's request has been deemed as refused as a decision has not been made by ASIC within the statutory timeframe. You have therefore sought further time to process the request.

### Contact with Applicant

Prior to making a decision we contacted Mr Fairless to seek his view on ASIC's request for an extension to 29 February 2016. On 3 February 2016, Mr Fairless responded requesting that the Office of the Australian Information Commissioner (**OAIC**) grant a lesser extension, for example 19 February 2016, to process his request.

Mr Fairless also expressed surprise that ASIC does not appear to have processes in place for tracking FOI requests and requested that that ASIC prioritise the processing of his request.

### Decision

As a delegate of the Information Commissioner, I am authorised to make decisions on requests for extensions of time under s 15AC of the FOI Act.

I have decided to grant ASIC further time under s 15AC (5) of the FOI Act **to close of business 19 February 2016**. In coming to this decision we have considered factors including your advice that:

- Mr Fairless has not sought Information Commissioner review of ASIC's deemed refusal decision, or objected to an extension being granted.

Mr Fairless only disagrees with the length of time requested by ASIC. I give this significant weight.

- ASIC advises that scope of the request covers one document totalling 44 pages. ASIC indicate that 'this matter was inadvertently overlooked by the team allocated the request'. ASIC does not specifically address how it lost track of this request other than to attribute this to the time of year during which the request was made. ASIC states that there is no issue with its processes.
- ASIC has engaged with Mr Fairless once it became aware that his FOI request has been overlooked. The parties have explored the possibility of dealing with the request administratively. I also note that ASIC has informed Mr Fairless that the matter will need to be decided under the FOI Act and that it would be seeking a s 15AC extension of time from this Office. However, I note that none of the correspondence between the parties provided to the OAIC has contained an apology to Mr Fairless for the delay.
- ASIC advises that third party consultation is required prior a decision being made on the FOI request made by Mr Fairless. ASIC note that 'should the third party not object to release, it is likely that the document will be released to the applicant'. Consultation commenced on 28 January 2016 with the third party being provided with an opportunity to respond by 12 February 2016. I consider that allowing ASIC additional time in order to finalise the consultation with a third party may result in ASIC being able to make a decision that releases more information to Mr Fairless. I consider this to be consistent with the policy of pro-disclosure across government. I note ASIC's concern about meeting a deadline of 19 February 2016 if the third party objects to the release or partial release of the document. However, I consider Mr Fairless' request that the matter be prioritised to be a fair one and in such circumstances an extension until 19 February 2016 should be adequate to make a well-reasoned FOI decision.

Granting this extension of time, albeit a shorter one than ASIC has requested, balances Mr Fairness' desire to receive documents in the shortest possible time frame with allowing ASIC the opportunity to make a well-reasoned FOI decision.

I note that this allowance under s 15AC of the FOI Act will mean that the deemed refusal is taken never to have applied if ASIC makes a decision and takes all reasonable steps to provide it to Mr Fairless by **close of business 19 February 2016**. Such an extension can only be granted once and cannot be extended by a variation.

**Please note that an extension under s 15AC of the FOI Act means that charges cannot be reimposed.**

A copy of this decision will be provided to Mr Fairless.

## Contact

If you have any questions about this email, please contact me on (02) 9284 9615 Tuesday and Wednesdays. Alternatively I can be contact by email at [Ben.Kirkwood@oaic.gov.au](mailto:Ben.Kirkwood@oaic.gov.au). In all correspondence please include reference number **RQ16/00557**.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ben Kirkwood', with a stylized flourish at the end.

Ben Kirkwood  
Investigations Officer  
Dispute Resolution Branch

10 February 2016