



ASIC

Australian Securities & Investments Commission

Our Ref: SPEAR 09-20044/FOI
Your Ref: AZF/AZF/351240/3 & AUM/1212133919.1

13 April 2016

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Mr Ben Fairless

By email only to: foi+request-1447-d8566fc2@righttoknow.org.au

Dear Mr Fairless

**Request For Internal Review Under Section 54B
Of The Freedom Of Information Act 1982**

1. I refer to your request made under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) dated 22 December 2015 which sought access to the "ACM debt collector training manual" referred to in ASIC Media Release 12-261 (**the Request**).
2. On 22 February 2016, a decision (**the First Decision**) was made by Jenna Molesworth (**the Decision Maker**) in response to the Request
3. The Decision Maker identified one document which fell within the terms of the Request, being a 44-page document titled "Introduction", dated May 2007, Version 1.4, barcoded S02059083 (**the Document**) and decided that the Document was to be released to you in full.
4. The Decision Maker advised in the First Decision that the Document could not be released to you until an affected third party who had been consulted in the decision making process had been given an opportunity to exercise their review rights.
5. On 18 March 2016, ASIC received a request for an internal review from an affected third party under section 54B of the FOI Act in respect of The Request (**the Internal Review Request**).
6. I am authorised to conduct the internal review under section 54 of the FOI Act. This letter gives notice of my decision on the Internal Review Request which has also been communicated to the third party.

My Review Decision

7. I advise that as a result of my review of the First Decision, I have decided that the Document should be partially released with the remainder being exempt under section 45 FOI Act from release because the Document was obtained in confidence and remains confidential, but for

the portions of the Document which became public during the proceeding *Australian Securities and Investments Commission v Accounts Control Management Services Pty Limited and Anor* [2012] FCA 1164 (**the Proceeding**). But for the portions of the Document which became public, the Document is also exempt under section 47 FOI Act, because it discloses commercially valuable information.

8. A redacted copy of the Document will be forwarded to you once the review rights of the affected third-party have expired.

The First Decision

9. On 12 February 2016, the Decision Maker received submissions from an affected third-party (**the First Submission**). The Decision Maker rejected the First Submission and granted access to the Document on the basis that the Document had lost its quality of confidentiality because the Document was tendered and was the subject of examination and cross-examination during the trial in the proceeding *Australian Securities and Investments Commission v Accounts Control Management Services Pty Limited and Anor* [2012] FCA 1164 (**the Proceeding**), and was also referred to in a judgment of the Proceeding.

Further Submissions

10. On 18 March 2016, ASIC received further submission (**the Second Submission**) from the same affected third-party.

The Document

11. The Document is a manual prepared by Accounts Control Management Services Pty Ltd or ACM Group Limited (collectively, **ACM**).

Breach of Confidence

12. Section 45(1) of the FOI Act states:

"A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence".

13. There are five elements which must be satisfied before a document can be considered to be exempt so as to refuse access to a document (or part of a document) which contains material obtained in confidence:

- (1) The information must be specifically identified;
- (2) The information must be confidential;
- (3) The information must have been communicated and received on the basis of a mutual understanding of confidence;
- (4) The information must have been disclosed or threatened to be disclosed, without authority;
- (5) Unauthorised disclosure of the information has or will cause detriment.

Specifically identified

14. I accept that the information has been specifically identified.

Quality of confidentiality

15. All of the information in the Document, but for the information contained in those portions of the Document that were discussed during the trial of the Proceeding and the portions that were contained in the judgment of the Proceeding, as confidential or known only to a limited group, namely employees of ACM. I accept that the information remains confidential.

Mutual understanding of confidence

16. The Document was provided to ASIC in the exercise of ASIC's investigative function and ASIC accepted the document on the basis that it would remain confidential, other than in limited circumstances in which disclosure of the Document was necessary to carry out ASIC's official functions, for example, civil proceedings. ASIC's position is that ASIC's investigations are conducted within a confidential framework this extends to maintaining confidentiality over documents produced during surveillances or investigations. I accept that the Document was provided to ASIC on the basis that ASIC would maintain confidentiality over the Document.

Unauthorised disclosure or threatened disclosure

17. The Request to release the Document has not been authorised by the Document's author. Releasing the Document in response to the Request would amount to an unauthorised disclosure, for the purposes of founding an action for breach of confidence.

Detriment

18. If the Document became publicly available and available to ACM's competitors, it would give its competitors the ability to refine their own internal systems and procedures and give its competitors an unreasonable insight into ACM's internal systems, procedures and operations. I accept this claim.

Information in the Document which is publicly available

19. Based on the information before me, I note that portions of the Document were made public in two ways, both arising out of the Proceeding:
- a. The transcript;
 - b. The judgment.

The Transcript

20. I note that the Document was referred to in the following parts of the transcript of the Proceeding:

Date	Page Number of transcript	Page number in Document
26/4/2012	106	20
26/4/2012	107	22 and 24

26/4/2012	125	2
26/4/2012	127	4
26/4/2012	108	14
26/4/2012	129	20
26/4/2012	129	21
26/4/2012	131	23, 24
26/4/2012	132	24

The Judgment

21. The Judgment in the Proceeding quoted the Document at the following points:

Paragraph number in the judgment	Page number in the Document
24	2, 4 and 20
25	22
26	23
27	24
30	14

Documents disclosing trade secrets or commercially valuable information

22. I advise that, but for the parts of the Document that have lost confidentiality and are publicly available, the Document is also exempt under section 47(1) FOI Act on the basis that it discloses commercially valuable information. Section 47(1) states:

"A document is an exempt document if its disclosure under this Act would disclose:

- (a) Trade secrets; or
- (b) Any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed."

23. The Document contains current "strategic, training, operational and systems information" which continued to have commercial value and disclosure of the Document "could be used by competitors to ACM's detriment".

Your rights

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

25. In the event that you are dissatisfied with the decision:

- 1. You may within 30 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 faithfully



Penny Beck

(Authorised internal-reviewer under subsection 54(1) of the FOI Act)
for the Australian Securities and Investments Commission