



ASIC

Australian Securities & Investments Commission

23 March 2016

Ben Fairless

By email: foi+request-1502-105abfab@righttoknow.org.au

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Dear Mr Fairless,

Request Pursuant to the Freedom of Information Act 1982 for Access to Documents

I refer to your email of 19 January 2016, containing a request for documents in the possession of the Australian Securities and Investments Commission (ASIC) made under the *Freedom of Information Act 1982* (Cth) (FOI Act).

Your request sought access to "*a copy of any application made to OAIC to have an FOI applicant made vexatious*" and further stated "*I am happy for you to withhold the personally identifiable information of the individual.*"

Following receipt of ASIC's estimate of charges notice dated 4 February 2016, you amended your request to documents answering the following description:

1. A copy of a vexatious applicant application made by ASIC to the OAIC dated 10 February 2012 (VAA) and
2. Letters passing between ASIC and various government agencies annexed to the VAA (the amended request)

The Decision

I am the authorised decision-maker for the purposes of section 23(1) of the FOI Act and this letter gives notice of my decision.

I have identified three documents as coming within the terms of the amended request. These documents are listed in the schedule attached to this letter.

I advise that I have decided to release the documents with deletions. The deletions are applied on one of the following 2 grounds:

1. Irrelevant matter

Some information has been excluded from the documents on the basis that it contains matter irrelevant to your request. The deletions marked in black are applied on the basis that the information is irrelevant to your request. In your initial request you stated "*I am happy for*

you to withhold the personally identifiable information of the individual". Whilst this was not reinforced in the amended request, I have processed your request on the assumption that you did not seek to amend this aspect of your request. I have therefore deleted from the documents the personally identifiable information of the individual subject of the VAA. This information includes the individual's name and details of the complaints this individual has made to ASIC.

Document 2 is a letter from ASIC to the Treasury which refers to an attachment being a confidential briefing note to the Treasury containing details of ASIC's dealings with the subject of the VAA in relation to his complaints. I have excluded this attachment from the request as irrelevant on the basis that the entire document would reveal the personally identifiable information of the individual.

2. Exempt matter

The deletions marked in green are applied on the basis that the information is exempt from release for the reasons set out below under the heading "Exemption".

A copy of the documents with both black and green deletions applied is provided with this letter.

Exemption

I advise that I have decided not to release the parts of the documents deleted in green pursuant to your request on the grounds that these parts are exempt from release for the following reason:

Conditionally exemption under section 47F of the FOI Act –personal information

Section 47F(1) of the FOI Act states

“A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).”

“Personal Information” is defined in section 4 of the FOI Act to mean information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

The documents contain the following types of personal information:

1. the names and other information which would identify ASIC officers who were involved in the matters discussed in the VAA including in the handling of FOI requests and complaints made by the subject of the VAA; and
2. the name of a Treasury officer to whom document 2 was addressed.

I am satisfied that the information described above is “personal information” as defined in section 4 of the FOI Act.

In relation to the information of ASIC officers, the ASIC officers named in the VAA were not disclosed to the individual subject of the VAA nor were they made public during the VAA process. In the circumstances, and considering that the subject of the VAA has publicly criticised certain ASIC officers, I consider that release of this information would be unreasonable.

The Treasury was consulted on release of document 2, a letter from ASIC to Treasury dated 25.10.10. Treasury requested that the name of the officer to whom the letter is addressed be redacted under s 47F of the FOI Act on the basis that disclosure would be unreasonable. This is on the basis that it is Treasury's practice that the names of officers of a certain level or below not be released in documents disclosed pursuant to requests made under the FOI Act. In the circumstances, I consider that release of this information would be unreasonable.

As required by section 47F(2) I have had regard to the following matters:

- 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 documents;
- c) the availability of the information from publicly assessable sources;
- d) any other matters that the agency or Minister considers relevant.

As stated above, disclosure of the parts of the documents deleted in green would reveal the identities of ASIC officers named in the VAA and the identity of the Treasury staff member to whom document 2 is addressed. This information has not otherwise been disclosed and is not otherwise public knowledge. Further, the persons are not publicly known to be or to have been associated with the matters discussed in the documents. In the circumstances, I am of the view that the disclosure of this information would be unreasonable.

I find therefore that the disclosure of the parts of the documents deleted in green are conditionally exempt pursuant to section 47F(1) of the FOI Act.

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 release of the parts of the documents deleted in green would, on balance, be contrary to the public interest.

In particular, I have had regard to the following factors outlined in section 11B(3) as being factors favouring access to the portions of the documents deleted in green in the public interest:

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

The objects of the FOI Act include promoting accountability and transparency in government decision making and effective oversight of public expenditure. In this case, the release of the personal information supports the objects of the FOI Act by making available information which concerns government agency decision making. In my view releasing the names of

ASIC and Treasury officers in the above circumstances does not further promote the objects of the FOI Act in this regard.

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

I do not find that disclosure of the personal information of ASIC and Treasury officers would inform debate on a matter of public importance.

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

I find that this is an irrelevant consideration as this information does not relate to matters of public expenditure.

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

I find that this is an irrelevant consideration as this information does not relate to your personal information.

Accordingly I do not find that any of the above factors favour access to the in the public interest.

In my view disclosure of the parts of the documents deleted in green would, on balance, be contrary to the public interest. Accordingly, I find that the deletions are exempt from release under section 47F(1) of the FOI Act.

Section 22

Section 22 of the FOI Act provides that where an agency or Minister decides not to grant access to a document on the ground that it is an exempt document and;

- It is possible for the agency or Minister 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 or Minister, 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 or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister 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, pursuant to section 22 of the FOI Act, it is possible to release the documents with deletions such that the documents would no longer be exempt. I have found that it is possible to release the documents subject to deletions such that the documents would no longer be exempt. A copy of each of the documents with the exempt portions deleted in green is enclosed with this letter.

Assessment of Charges

The FOI Act provides that charges may be assessed for time spent processing your request. There are no charges applicable to the processing of your request in this instance based on the following assessment:

Search and retrieval time	minimal – no charge	=	\$	NIL
Decision making time*:	3 hours x \$20.00 per hour	=	\$	60.00
Photocopying :	minimal – no charge=		\$	NIL
Postage:	minimal – no charge	=	\$	TBA
Subtotal:		=	\$	60.00
Minus 1 st 5 hours of decision making time*			-\$	60.00
Total		=	\$	NIL

** The Freedom of Information (Charges) Regulations 1982, as amended on 1 November 2010, provide that the first 5 hours of decision making time is free.

Review Rights

I provide you with the following information as required by section 26 of the FOI Act.

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 ASIC for a review of my decision by another ASIC officer under section 54B of the FOI Act. This request should be addressed to me or to the Senior Manager, Administrative Law GPO Box 9827 SYDNEY or by email to foirequest@asic.gov.au
2. You may 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.
3. You may lodge a complaint with 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,



Mirijana Soldatic

for the Australian Securities and Investments Commission

(Authorised decision-maker pursuant to sub-section 23(1) of the FOI Act)

Schedule of Documents

Doc No	Date of document	Description of document	No of pages	Decision on Access	Relevant Section (s) of FOI Act
1	10.2.2012	A vexatious applicant application made by ASIC to the OAIC (VAA)	15	Partial release	47F(1)
2	25.10.2010	Letter from ASIC to The Treasury	2	Partial release	47F(1)
3	5.7.2011	Letter from ASIC to the Commonwealth Ombudsman	7	Partial release	47F(1)