



Australian Securities & Investments Commission

Our Reference: 2056/16

GPO Box 9827
In your capital city

www.asic.gov.au

22 January 2016

Mr Justin Warren
By email: foi+request-1507-724d624c@righttoknow.org.au

Dear Mr Warren

**Freedom of Information Request –
Notice to Identify Documents under Section 24AB of the Act**

I refer to your email dated 20 January 2016 seeking access to documents under the *Freedom of Information Act 1982* (FOI Act). Your request is in the following terms:

I am writing to request, under the Freedom of Information Act 1982 (FOI Act), access to documents containing aggregate statistics on the number of reports of misconduct received by the Commission, the section of the Corporations Act that applies to the alleged misconduct, and the status of these requests.

By outcome, I mean that either an investigation was not performed, or a categorization of the outcome similar to that in paragraph 4 of the latest report on enforcement outcomes (Report 444, August 2015):

<http://download ASIC gov au/media/3315413/rep444-published-5-august-2015 pdf>

E.g. a) commenced investigation, b) completed investigation, c) criminal charges laid, d) banned individual(s), e) enforceable undertaking accepted, f) directors disqualified, and/or whatever status categories the Commission has used in the documents requested.

An example of the categorisation of reports by section of the Corporations Act is found in Table 2 of the aforementioned Report 444 on page 12.

I further request documents containing these aggregate statistics grouped by month, quarter, or calendar year, whichever is the most detailed information available in documents held by the Commission.

I further request documents containing these aggregate statistics for the time period 01 Jan 2006 to 31 Dec 2015, or the largest consecutive time-span within this range for which the Commission holds documents matching this request.

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I advise that your request does not comply with paragraph 15(2)(b) of the FOI Act. This is because your request does not provide enough information to enable me to identify the documents you are seeking to access. I have included some information in this letter about my preliminary searches to assist you.

Paragraph 15(2)(b) states that a request must "provide such information concerning the document as is reasonably necessary to enable a responsible officer of an agency to identify it". As paragraph 15(2)(b) has not been met ASIC may, in line with paragraph 24(1)(b) of the FOI Act, refuse to process your application.

In its current form, it would be my intention to refuse access to the documents sought in your letter. However, to assist you to make a valid request I make the following comments.

Publicly available statistics on reports of misconduct

ASIC's 2014-2015 Annual Report is publicly available at our website www.asic.gov.au. Section 2 sets out outcomes in detail and includes the outcomes for assessing reports of misconduct. Your request includes the number of reports of misconduct received. Our Annual Report states that in 2014–15, we dealt with 9,669 reports of alleged misconduct. The Annual Report also includes the total number received for the previous financial year.

Your request also refers to the outcome, sections of the *Corporations Act 2001* and status. You have referred to ASIC's Enforcement Outcome report as an example of the outcome breakdown and categorisation of sections of the Act.

The table 2 you have mentioned in your request relates to reports of misconduct that we received from external administrators regarding the construction industry. As you may know, the *Corporations Act 2001* requires external administrators to conduct preliminary inquiries into the affairs of the company and report to ASIC where these inquiries reveal evidence that the directors have committed offences.

We would need to clarify whether you are seeking access to documents containing statistics specifically about statutory reports of misconduct from external administrators or reports of misconduct from the general public.

ASIC's Misconduct & Breach Reporting Team conducts an assessment of every report of misconduct we receive. We receive reports of misconduct that involve allegations of breaches of laws other than breaches of the *Corporations Act 2001*. For example, reports of misconduct may set out alleged breaches of the Australian Consumer Law and not specific sections of the Corporations Act.

For reports of misconduct from the general public, our Annual Report provides a different breakdown of the outcome to that set out in the Enforcement Outcome report you have mentioned in your request. Further, not all of the Enforcement team's work will stem from reports of misconduct that we have received. For example, ASIC's enforcement outcome may be as a result of an ASIC surveillance and not a report of misconduct from the general public.

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The report of misconduct from the general public outcomes are set out in tables and figures on page 74 of the Annual Report.

If you are seeking access to statistics about reports of misconduct from external administrators, you may also be interested in pages 76-77 of our Annual Report.

You have also requested statistics from 1 January 2006. ASIC's Annual Reports contains statistics by financial year. When we have clarified your request, we may also need to consider if it involves the creation of a document to satisfy a request.

Charges

The first 5 hours of decision making for FOI requests is free. ASIC is entitled to charge for searching and retrieval of documents and decision making time in excess of 5 hours. When we receive a valid request from you we will consider your request for a fee waiver.

As a general rule, an application must be processed within 30 days. However, please note that in line with section 24AB(8) of the FOI Act, the time for processing your request is suspended from the day that you receive this letter. The processing time starts again on the day after ASIC receives from you a request in writing which contains sufficient information to identify the documents required.

Consultation

You can contact me by telephone on 03 9280 3382 or by email at fiona.crowe@asic.gov.au for assistance in making your request in a revised form which removes the grounds for refusal. If you are going to consult with me for this purpose, you are required to contact me within 14 days after the date that you receive this letter.

Please note that following any consultation, if you amend the terms of your request, you are required, in compliance with section 15(2)(a) of the FOI Act to confirm in writing the terms of your amended request.

Section 24AB(6) of the FOI Act, provides that before the end of the consultation period you are required to have done one of the following

- (a) withdrawn the request;
- (b) made a revised request;
- (c) indicated that you do not wish to revise the request

If I do not hear from you about clarifying your request within 14 days after the date of this letter your request will, under sections 24AB(6) and s24AB(7) of the FOI Act, be taken to be withdrawn.

Yours sincerely



Fiona Crowe
Authorised decision-maker under subsection 23 of the FOI Act
For the Australian Securities and Investments Commission