



ASIC

Australian Securities & Investments Commission

Our Ref: 14-20083

21 March 2016

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Dear Sir

### **Request Under the Freedom of Information Act 1982 For Access to Documents**

I refer to your request under the Freedom of Information Act 1982 (**FOI Act**) received by this office on 5 March 2016 in which you sought access to any letters of complaint received by the Australian Securities and Investments Commission (**ASIC**) from one or more members of the Australian public where the complainant or complainants has or have alleged that they has or have suffered a financial loss due to the conduct of ANZ Bank Bill Swap Market traders during the period 9 March 2010 and 25 May 2012.

I am the authorised decision-maker for the purposes of section 23 of the FOI Act.

#### **Relevant Legislation**

Section 25(1) of the FOI Act provides:

*Nothing in this Act shall be taken to require an agency or Minister to give information as to the existence or non-existence of a document where information as to the existence or non-existence of that document, if included in a document of an agency, would cause the last-mentioned document to be:*

- (a) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1);*  
*or*
- (b) an exempt document to the extent referred to in subsection 45A(2) or (3).*

Section 37(1) of the FOI Act provides:

*A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*

- (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the*

*enforcement or proper administration of the law in a particular instance;*

*(b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or*

*(c) endanger the life or physical safety of any person.*

Section 22 of the FOI Act provides that where an agency or Minister decides not to grant access to a document on the grounds that it is an exempt document or that to grant access to a document would disclose information that would reasonably be regarded as irrelevant to the request: and, "it is possible for the agency....to make a copy of the document with such deletions that the copy ....would not be an exempt document: and ..would not disclose such information....and it is reasonably practical 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 the 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".

### **Decision**

My decision is to apply section 25 and paragraph 37(1)(a) of the FOI Act to your request, and therefore neither confirm or deny the existence of documents in ASIC's possession that may fall within the scope of your request.

Under the FOI Act, agencies can refuse to confirm or deny the existence of documents that fall within the scope of an FOI request, and thereby refuse access to documents under an FOI request, where to do so would reveal a document that is exempt from release because its disclosure would, or could reasonably be expected to, prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance. This is provided for under section 25 and paragraph 37(1)(a) of the FOI Act, as referred to above.

I consider that to disclose whether or not ASIC has received complaints of financial loss due to the conduct of ANZ Bank Bill Swap Market traders during the period of your request, as well as any documents relating to those complaints, such as documents recording ASIC's inquiries into the complaints and our consideration of the issues raised, would reveal a document that is exempt from release because its disclosure would, or could reasonably be expected to, prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance.

ASIC is Australia's market supervisor, and our role involves receiving reports of misconduct from market participants, fellow regulators, and the public, about the operations of listed entities and market conduct. We assess all reports of misconduct (including complaints) we receive to determine whether the concerns raised suggest breaches of the laws we administer, and whether we have sufficient grounds to take further action in response to any alleged breaches.

General information about our approach to law enforcement and our assessment of reports of misconduct is contained in ASIC Information Sheets 151 and 153 respectively, available from our website: [www.asic.gov.au](http://www.asic.gov.au).

Apart from this general information, and the information on our website about our market supervision responsibilities, ASIC does not comment specifically on the performance of our market supervision, including our consideration of any reports of alleged misconduct we may receive about listed entities and markets-related conduct.

We are aware that any public comment we may make, such as whether we have received reports of misconduct or how we treat reports of misconduct about markets-related issues, may affect the market in an unfair or adverse way, and we are committed to a fair, orderly, and transparent market.

I have also considered whether, pursuant to section 22 of the FOI Act, access should be granted to part of the aforementioned exempt documents. For the reasons above, explaining the basis of the exemptions applied in respect to the documents, I find that the documents are "exempt documents" as defined by the FOI Act. I further find that it would not be possible to make a copy of the documents with such deletions that the documents would not be exempt documents.

### **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](mailto: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 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



Emman Farroukh  
Senior Manager  
Market Integrity Enforcement  
(Authorised decision-maker under subsection 23(1) of the FOI Act)  
for the Australian Securities and Investments Commission