



ASIC

Australian Securities & Investments Commission

Our Reference: 14-20083

20 April 2016

Mr Phillip Sweeney

**By email:** <foi+request-1721-07d13df5@righttoknow.org.au>

Level 7, 120 Collins Street,  
Melbourne VIC 3000  
GPO Box 9827, Melbourne VIC 3001  
DX 423 Melbourne

Telephone: +61 3 9280 3200  
Facsimile: +61 3 9280 3444  
www.asic.gov.au

Dear Sir

**Request for Internal Review Under Section 54B of the *Freedom of Information Act 1982***

I refer to your email of 22 March 2016 received by this office on the same date requesting a review of the decision dated 21 March 2016 on your request for access to documents under the *Freedom of Information Act 1982 (FOI Act)*.

I am authorised to conduct the internal review under section 54 of the FOI Act.

**Background**

ASIC initially received your request on 5 March 2016 which was in the following terms:

*"I am lodging a Freedom of Information Request in relation to ASIC's action against ANZ bank and the conduct of ANZ traders in the Bank Bill Swap Market.*

*The documents I seek are any letters of complaint received by 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."*

Ms Emman Farroukh of ASIC was the decision-maker on your request and did not provide you access to any documents on the basis that Ms Farroukh neither confirmed nor denied 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.

### **Internal review**

I have reviewed Ms Farroukh's decision dated 21 March 2016.

I disagree with her decision to neither confirm or deny the existence of documents in ASIC's possession that may fall within the scope of your request on the basis that Ms Farroukh considered 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 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.

In conducting my review I have searched ASIC's internal confidential databases for documents which fall within the scope of your request. These searches have revealed no documents that fall within the scope of your request.

Section 24A(1) of the FOI Act states:

*An agency or Minister may refuse a request for access to a document if:*

- (a) all reasonable steps have been taken to find the document; and*
- (b) the agency or Minister is satisfied that the document:*
  - (i) is in the agency's or Minister's possession but cannot be found; or*
  - (ii) does not exist.*

I am satisfied that all reasonable steps have been taken to locate the documents that fall within the scope of your request. Pursuant to section 24A(1)(b)(ii) of the FOI Act, I have decided to refuse your request for access to the documents the subject of your request on the basis that the documents do not exist.

### **Next steps**

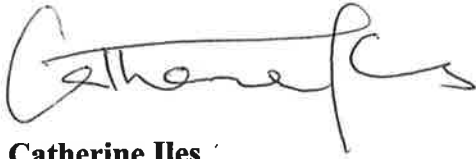
I provide you with the following information as required by the FOI Act.

In the event that you are dissatisfied with the decision:

1. You may within 60 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](mailto:ombudsman@ombudsman.gov.au), by letter to GPO Box 442 Canberra ACT 2601, or by fax to (02) 6276 0123.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Catherine Iles', written in a cursive style.

**Catherine Iles**

**Authorised internal-reviewer under section 54 of the FOI Act  
For the Australian Securities and Investments Commission**