

Our ref: CRM2017/482

8 May 2017

Phillip Sweeney

Via email: foi+request-3416-64e4d40a@righttoknow.org.au

Dear Mr Sweeney,

Freedom of Information Request – Section 24AB(2) Notice

I refer to your request of 16 April 2017 seeking information under the *Freedom of Information Act 1982* (the Act) relating to any serious offences involving a major financial institution with a registered office in NSW that has been brought to the attention of the AFP by an ASIC officer.

Notification

1. At this time, the AFP is satisfied that the work involved in processing that request would substantially and unreasonably divert the resources of the AFP from its other operations.
2. Notice is hereby given under section 24AB(2) of the Act of an intention to refuse to grant access to the documents sought, pursuant to section 24AA of that Act.
3. The agency officer with whom you may consult with a view to making the request in such a form that would remove the ground is Elise Jones. She may be contacted on (02) 6131 6131.
4. The following information is provided to assist you in making a request in such a form that the grounds for the section 24AA refusal are removed.

Volume of material held

5. Preliminary enquiries concerning your request for documents have been made which indicate that there is a large volume of documents which fall within the scope of your request.
6. The AFP maintains that to process the request in its current form would substantially and unreasonably divert the resources of the AFP from its other operations.
7. One business area has advised that ASIC is recorded in PROMIS as the client, complainant or referrer organisation in over 550 cases. It is estimate to manually conduct an initial assessment of these involvements to determine if it meets the criteria of the FOI would take between 10 and 60 minutes for each one. This process may require us to examine a range of documents/attachments to determine if it

meets the criteria; as well as additional enquiries to determine if the company is listed in NSW as this is unlikely to be clear from the material held in PROMIS.

8. The initial assessment process does not include the activity required if a matter is identified as relevant. We would be required to print and review potentially a large number of documents relating to each matter and to follow up with individual case officers on each matter. Consultation with ASIC and the individual agencies will be required.

9. This is a burden in terms of resources and is made relevant to a section 24AA(1) decision by virtue of section 24AA(2)(a),(b),(c) and (d).

10. To process your request in its current form would be a substantial burden on the FOI Team which will impact severely on other requests for information to the detriment of a number of other applicants. The AFP maintains that to process the request in its current form would substantially and unreasonably divert the resources of the AFP from its other operations.

Narrowing of scope

10. You could consider amending your scope by narrowing your request which would remove the ground for the section 24AB refusal by:

- Limit your request to a specific company which you are seeking information about.
- Provide a specify date range for that matter (1 to 2 years maximum).
- Limit your request to types of documents such as the referral or final reports involving a specific company.
- Remove 3rd party information form the scope of the request.

11. Under sub-section 24AB(6) of the FOI Act, you are required within the 14 day period to do one of the following:

1. withdraw the request;
2. make a revised request; or
3. Indicate that you do not wish to revise the request.

12. As noted above, I would of course be available to discuss the matter. Should you not avail yourself of this opportunity to consult within 14 days of the date of this letter, notice will be given of a decision to refuse access on the basis stated above.

13. An extract of sections 24AA and AB of the Act is attached for your information.

Yours sincerely,



Nathan Scudder
Coordinator
Freedom of Information
Chief Counsel Portfolio

24AA When does a *practical refusal reason* exist?

- (1) For the purposes of section 24, a ***practical refusal reason*** exists in relation to a request for a document if either (or both) of the following applies:
 - (a) the work involved in processing the request:
 - (i) in the case of an agency—would substantially and unreasonably divert the resources of the agency from its other operations; or
 - (ii) in the case of a Minister—would substantially and unreasonably interfere with the performance of the Minister's functions;
 - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:
 - (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;
 - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:
 - (i) examining the document; or
 - (ii) consulting with any person or body in relation to the request;
 - (c) making a copy, or an edited copy, of the document;
 - (d) notifying any interim or final decision on the request.
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:
 - (a) any reasons that the applicant gives for requesting access; or
 - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or
 - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.

24AB What is a *request consultation process*?

Scope

- (1) This section sets out what is a ***request consultation process*** for the purposes of section 24.

Requirement to notify

- (2) The agency or Minister must give the applicant a written notice stating the following:
 - (a) an intention to refuse access to a document in accordance with a request;
 - (b) the practical refusal reason;
 - (c) the name of an officer of the agency or member of staff of the Minister (the ***contact person***) with whom the applicant may consult during a period;
 - (d) details of how the applicant may contact the contact person;

- (e) that the period (the **consultation period**) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.

Assistance to revise request

- (3) If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.
- (4) For the purposes of subsection (3), **reasonable steps** includes the following:
 - (a) giving the applicant a reasonable opportunity to consult with the contact person;
 - (b) providing the applicant with any information that would assist the applicant to revise the request.

Extension of consultation period

- (5) The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.

Outcome of request consultation process

- (6) The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:
 - (a) withdraw the request;
 - (b) make a revised request;
 - (c) indicate that the applicant does not wish to revise the request.
- (7) The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:
 - (a) the applicant does not consult the contact person during the consultation period in accordance with the notice; or
 - (b) the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.

Consultation period to be disregarded in calculating processing period

- (8) The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

No more than one request consultation process required

- (9) To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.