

5 July 2017



ASIC

Australian Securities & Investments Commission

Mr Jason Simpson

By email: [foi+request-3680-5cf6c4ff@righttoknow.org.au](mailto:foi+request-3680-5cf6c4ff@righttoknow.org.au)

Dear Mr Simpson,

Level 20, Commonwealth Bank Building,

240 Queen Street, Brisbane QLD 4000

GPO Box 9827, Brisbane QLD 4001

DX 322 Brisbane

Telephone: +61 7 3867 4700

**Freedom of Information Request**

**Notice to identify Documents under section 24AB of the *Freedom of Information Act 1982* (FOI Act)**

I refer to your email dated 28 June 2017. Your email stated:

*"I am seeking information pursuant to the Freedom of Information act 1982.*

*The information I seek is in regards to ASIC's findings in their investigation of the placing of 3D Group PTY LTD*

*&*

*3D Industries PTY LTD into voluntary administration and the role of the Administrator, Domenic Calabretta of Mackay Goodwin Suite 2, Level 8, 10 Bridge Street, Sydney, NSW 2000.*

*After the 24/12/2014 appointment of Mr Calabretta (of Mackay Goodwin) as administrator of 3D Group & 3D Industries, he took control of both companies Westpac bank accounts and closed both of them and started a new account at the Macquarie Bank for both companies in administration.*

*3D Groups Westpac account was closed by Mr Calabretta with a total of \$280,499.43*

*3D Industries account was closed by Mr Calabretta with a total of \$4,939.00*

*On the 22/01/2015 The Administrator opened the account at the Macquarie bank with a total of \$248,504.15.*

*Note, these figures were supplied to me in the form of copies of the company's bank account statements by the administrator and were confirmed by Westpac Banking Corporation Limited.*

*On the 30/01/2015 Mackay Goodwin released Administrator reports for both 3D Group & 3D Industries (in administration) pursuant to Section 439A (4) (a) of the corporations act 2001.*

*The report for 3D Industries,  
section 6.3.1 Cash at Bank*

*"The RATA provided to this office identified cash at bank in the sum of \$4,966."*

*The report for 3D Group,  
section 6.3.1 Cash at Bank*

*"The RATA provided to this office identified cash at bank in the sum of \$248,533".*

*The 3D Group report in section 6.3.1 goes on to say*

*"On 13 January 2015, I received a response from the Westpac Banking Corporation Limited indicating that the company operated a bank account which had a balance of \$248,504.15.*

*Those funds were forwarded to my office are now under my control having been placed into the administration bank account".*

*The question is, What happened to the missing money?"*

Your email states that you are seeking information with regard to the voluntary administration of 3D Group Pty Ltd (**Group**) and 3D Group Industries Pty Ltd (**Industries**) (collectively the **Companies**) and the role of Mr Domenic Calabretta, the administrator.

Based on the information contained in your email, you appear to be seeking information from ASIC regarding the discrepancy between the amount of cash deposited in Group's bank account with Westpac, being \$280,499.43 and the amount of fund received by Mr Calabretta, being \$248,504.15. You do not appear to be seeking information regarding Industries as the amount of cash disclosed in the RATA is higher than the amount held by Westpac.

You appear to be raising a concern regarding Mr Calabretta's conduct. If that is the case, you may wish to consider lodging a complaint with ASIC: <http://www.asic.gov.au/about-asic/contact-us/how-to-complain/report-misconduct-to-asic/>.

### **Validity of your request**

Section 11 of the FOI Act allows a person to obtain access to a document of an agency, other than an exempt document. Based on the information contained in your email, you are seeking access to information and not a document of ASIC. As your email seeks access to information and does not identify the document that you wish to access, it is not a valid request under the FOI Act.

In addition, I advise that your request does not comply with section 15(2)(b) of the FOI Act as it does not provide any information to enable me to identify the documents to which you seek access. Section 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 section 15(2)(b) has not been met ASIC may, in accordance with section 24(1)(b) of the FOI Act, refuse to process your application.

In its current form, it would be my intention to refuse to process your application. However, to assist you to make a valid request I make the following comments:

- You need to describe the documents with sufficient detail to enable ASIC to identify the documents that you seek access. For example, identify the relevant company, and the type of documents. You may wish to consider whether you are seeking Westpac bank statements of Group for a particular period until the date of the administrators' appointment.

You should be aware that while the first 5 hours of decision making in respect to FOI requests is free of charge ASIC is entitled to charge for searching and retrieval of documents and decision making time in excess of 5 hours. Careful attention to the terms of the request can significantly reduce the provision of unrequired documents and thereby impact substantially upon the cost of the request.

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

You may wish to telephone me on 07 3867 4976 for assistance in making your request in a revised form which removes the grounds for refusal. Should you wish to consult with me for this purpose, you are required to contact me within 14 days after the date that you receive this via [patricia.hu@asic.gov.au](mailto:patricia.hu@asic.gov.au) or 07 3867 4976.

Please note that following any consultation, should you wish to 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 such amended request.

Pursuant to section 24AB(6) of the FOI Act, 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

Should I not hear from you in respect to the clarification of the terms of your request within 14 day after the date of this letter, your request will, in accordance with sections 24AB(6) and s24AB(7) of the FOI Act, be taken to be withdrawn.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Patricia Hu', is written over a light blue horizontal line.

Patricia Hu  
(Authorised Decision-maker under section 23(1) of the FOI Act)  
For the Australian Securities and Investments Commission