



ASIC

Australian Securities & Investments Commission

Our Ref: 26485/17

GPO Box 9827
In your capital city

15 August 2017

www.asic.gov.au

Mr Phillip Sweeney

By email: foi+request-3726-3d1c0cxx@xxxxxxxxxxxxx.xxx.xx

Dear Mr Sweeney

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

I refer to your email of 16 July 2017 (**your FOI request**) received by this office on 16 July 2017 in which you sought access under the *Freedom of Information Act 1982* (**FOI Act**) to documents in the possession of the Australian Securities and Investments Commission (**ASIC**).

Your FOI request stated, inter alia:

This Freedom of Information request is to determine if ASIC currently has possession of a copy of a Trust Deed for an occupational pension scheme dated 23 December 1913 that is recited in the Elder Smith & Co Limited Provident Funds Act 1963 (SA).

I have taken the above to be the reasons for your request and your request to be for:

a Trust Deed for an occupational pension scheme dated 23 December 1913 that is recited in the Elder Smith & Co Limited Provident Funds Act 1963 (SA).

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

The right to access documents pursuant to section 11 of the FOI Act refers to a 'document of an agency'. Section 4 of the FOI Act defines a document as a 'document of an agency' if:

- (a) the document is in the possession of the agency, whether created in the agency or received in the agency; or*
- (b) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document.*

You advise that the document is dated 23 December 1913 and is a Trust Deed for an occupational pension scheme. It is not a document created by, or required to be lodged with, ASIC. Section 6C of the Act relates to Commonwealth contracts and is not relevant to your FOI request.

Decision

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

...

(ii) does not exist.

In making my decision, I have undertaken searches of ASIC's internal databases (current and past file and record management systems), ASIC registers and made enquiries with relevant staff. I am satisfied that all reasonable steps have been taken to locate documents relevant to your FOI request. Based on these enquiries and the information before me, I am satisfied that ASIC does not have the document or the document does not exist.

Therefore, I have decided to refuse your FOI request pursuant to section 24A(1) of the FOI Act.

Review Rights

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 xxxxxxxxxxx@xxx.xxx.xx
2. You may, within 60 days after the day on which you have been notified of this decision, apply in writing to the Office of the Australian Information Commissioner (OAIC) for a review of my decision under section 54N of the FOI Act. You may contact the OAIC by post at GPO Box 5218 Sydney NSW 2001, by email at xxxxxxxxx@xxx.xxx.xx or by telephone on 1300 363 992

Right to complain

3. You may lodge a complaint with the OAIC in relation to the conduct of ASIC in the handling of this request. You may contact the OAIC as described above.

Yours faithfully



Chelsea McIntosh

(Authorised decision-maker under subsection 23(1) of the FOI Act)
for the Australian Securities and Investments Commission