



**ASIC**  
Australian Securities &  
Investments Commission

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25 September 2018

Mr Phillip Sweeney

**By e-mail: [foi+request-4762-125a837a@righttoknow.org.au](mailto:foi+request-4762-125a837a@righttoknow.org.au)**

Dear Mr Sweeney

**Freedom of Information Request -  
Advice to Applicant of Consultation with Affected Third Parties**

I refer to your e-mail dated 28 August 2018 in which you sought access to documents under the *Freedom of Information Act 1982 (FOI Act)*, and my e-mail to you dated 11 September 2018.

A document that falls within the terms of your request contains personal information about an individual. Under the FOI Act, this information may be exempt from release, including under the privacy exemption under section 47F of the FOI Act. For this type of information, section 27A of the FOI Act makes provision for consulting with the affected person to obtain their views before a final decision is made on whether to release a document. In deciding whether to release a document, the FOI decision-maker must objectively consider all the relevant factors involved in relation to the application, including the views contained in any submission from an affected party.

Accordingly, on 24 September 2018, I wrote to the third party individual inviting them to make a submission. The third party asked about the identity of the FOI applicant. Under paragraph 3.40 of the FOI Guidelines released by the Office of the Australian Information Commissioner (May 2018) (<https://www.oaic.gov.au/resources/freedom-of-information/foi-guidelines/foi-guidelines-combined-may-2018.pdf>), an agency should not provide the name of an FOI applicant to an affected third party without the prior consultation and agreement of the FOI applicant.

In addition, the affected third party asked about your intended use of the documents sought under the FOI application. In this respect, an FOI applicant's reasons for requesting information may be a relevant consideration for the purposes of an agency considering whether disclosure would be unreasonable where required under an exemption. For example, when deciding whether the disclosure of personal information about a person under s 47F(1) would be unreasonable, an agency may take

into account the likelihood of an FOI applicant publishing the personal information in an article. Please refer to paragraph 3.35 of the FOI Guidelines.

As a result, please provide the following information **by Wednesday, 3 October 2018**:

- (1) whether you agree to the release of your name to the affected third party; and
- (2) whether you agree to the release to the affected third party of your intended use of the documents sought under this FOI application. If so, please provide an explanation of your intended use.

Under section 15(6) of the FOI Act, the normal statutory time limit of 30 days for processing your FOI request has been extended by a further 30 days, to enable the affected party to put forward their submission. Accordingly, you will be notified of my decision on your request as soon as possible and **by Thursday, 25 October 2018**, which is the end of the extended time period.

Please note that in the event that I decide, contrary to the views of the affected party, to release the documents which are the subject of the consultation, access to these documents cannot be granted to you until the affected party has been given the opportunity to seek either an internal review (within ASIC) of my decision or to seek review of my decision by the Information Commissioner. The third party request for an internal review by ASIC must be made within 30 days of being told of my decision on release and we are then required to process that request for internal review within 30 days. Naturally, you will be informed of any developments in this regard.

Should you have any questions concerning the processing of your request, please contact me at **james.grapsas@asic.gov.au** or on 03 9280 3606.

Yours sincerely



**James Grapsas**

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