



**ASIC**  
Australian Securities &  
Investments Commission

**Australian Securities  
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25 October 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**

I refer to my letter dated 25 September 2018 and your e-mail dated 26 September 2018.

Your request under the *Freedom of Information Act 1982 (Cth)* (**FOI Act**) dated 28 August 2018 sought access to the referral from the Superannuation Complaints Tribunal (the **Tribunal**) to the Australian Securities and Investments Commission (**ASIC**) under section 64 of the *Superannuation (Resolution of Complaints) Act 1993* regarding a decision of the Tribunal dated 3 July 2018 (the **Section 64 Referral**). The decision was the subject of articles in the *Australian Financial Review* in August 2018. Your request relates to the following documents:

- (a) the decision of the Tribunal dated 3 July 2018, determination number D18-19\002, file number 15-931;
- (b) the Tribunal's letter to ASIC dated 11 July 2018, enclosing the Section 64 Referral (dated 8 July 2018), the Tribunal's decision and a copy of the Tribunal's letter to NULIS Nominees Pty Ltd (**NULIS**) (see (c), below); and
- (c) the Tribunal's letter to NULIS dated 11 July 2018, which enclosed the Tribunal's letter to ASIC dated 11 July 2018, which in turn included the Tribunal decision and the Section 64 Referral.

For ease of reference, these documents as a group are referred to in this letter as 'the **FOI Documents**'.

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

#### **Section 47F exemption**

As stated in my letter dated 25 September 2018, I consulted with affected third parties about the possible application of exemptions under sections 47F and/or 47G of the FOI Act. The third party consultation process included ASIC receiving submissions from the complainant in the Tribunal proceedings that specific parts of the FOI Documents not be disclosed under section 47F of the FOI Act.

Subsection 47F(1) of the FOI Act relevantly provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Section 47F is a conditional exemption. Where the requirements of the section 47F exemption are satisfied, a decision maker must apply the public interest test. Section 11A(5) of the FOI Act provides that access must be given to a conditionally exempt document unless, in the circumstances, access would, on balance, be contrary to the public interest.

## **Section 22**

Section 22 of the FOI Act provides that where an agency or Minister decides not to grant access to a document on the grounds that it is an exempt document or that to grant access to a document would disclose information that would reasonably be regarded as irrelevant to the request: and, "it is possible for the agency....to make a copy of the document with such deletions that the copy ....would not be an exempt document: and ..would not disclose such information....and it is reasonably practical for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and resources available for the work, to make such a copy...the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make and grant access to such a copy".

## **Decision**

I decided that the exemption in section 47F applies to specific parts of the FOI Documents.

I have decided to release:

- (a) the Tribunal decision with redactions to remove personal information relating to the complainant in the Tribunal proceedings under the personal privacy exemption in section 47F of the FOI Act;
- (b) the Section 64 Referral, which comprises the one page document dated 8 July 2018 that includes "Section 64 Notification" as a heading, with the name of the Tribunal complainant redacted under the section 47F exemption;
- (c) the covering letter from the Tribunal to ASIC dated 11 July 2018; and
- (d) the covering letter from the Tribunal to NULIS dated 11 July 2018.

To avoid duplication of enclosures to the covering letters from the Tribunal to ASIC and NULIS, I will release each component of the FOI Documents, as set out in items (a) to (d), inclusive, in the previous paragraph, once only.

As the FOI Documents concern third parties, I am not allowed to provide you with access to documents unless, after all of the opportunities of affected third parties for review or appeal in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed: see 27(7) and 27A(6) of the FOI

Act. Affected third parties have 30 days from the date of being notified of my decision to seek internal review of the decision and/or to apply to the Office of the Australian Information Commissioner (**OAIC**) for a review of my decision: see sections 54B, 54N and 54S 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 e-mail to [foirequest@asic.gov.au](mailto:foirequest@asic.gov.au); and
2. You may within 60 days after the day on which you have been notified of this decision, apply in writing to the 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 e-mail at [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au) or by telephone on 1300 363 992.

### **Right to complain**

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 sincerely

JG

**James Grapsas, Senior Lawyer**

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