



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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10 December 2018

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Mr Ben Fairless
By email: foi+request-5017-0aac6194@righttoknow.org.au

Dear Mr Fairless

Freedom of Information Decision

I refer to your email received by the Australian Securities & Investments Commission (**ASIC**) on 14 November 2018 in which you seek access to the following under the *Freedom of Information Act 1982* (Cth) (**FOI Act**):

Under section 23 of the Freedom of Information Act, the principal officer or minister can make arrangements to give their decision making powers to others.

I'm hoping you can provide me with a copy of the current arrangements if possible.

The 30 day statutory time period for processing your request commenced on the day after the day on which your request was received (s 15(5) of the FOI Act). The due date for a decision on your request is therefore **14 December 2018**.

I am the authorised decision-maker for the purposes of section 23 of the FOI Act and this letter gives notice of my decision.

Decision

I have identified 2 documents which fall within the scope of your request. These documents comprise the following:

- Delegation, Nomination, Authorisation, Appointment and Approval of Arrangements (Chair of ASIC) Instrument 2018/0929 (**Document A**), and
- Business rules for the exercise of powers under the FOI Act (**Document B**).

My decision is to grant access in part to these documents. The reasons for my decision are set out below.

Information considered:

In reaching my decision, I have considered the following:

- the FOI Act;
- the Australian Information Commissioner's FOI Guidelines issued under s 93A of the FOI Act (**FOI Guidelines**);

- the terms of your request; and
- the documents within scope.

Reasons for decision

Section 47F of the FOI Act – personal privacy

Section 47F relevantly provides:

General rule

- (1) *A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*
- (2) *In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
 - (a) *the extent to which the information is well known;*
 - (b) *whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;*
 - (c) *the availability of the information from publicly accessible sources;*
 - (d) *any other matters that the agency or Minister considers relevant.*

The term, ‘personal information’, is defined in section 4 of the FOI Act to have the same meaning as in the *Privacy Act 1988* (Cth) (**Privacy Act**). Section 6 of the Privacy Act defines personal information as:

information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) *whether the information or opinion is true or not; and*
- (b) *whether the information or opinion is recorded in a material form or not.*

The FOI Guidelines state that key factors for determining whether disclosure of a document would involve an unreasonable disclosure of personal information include:

- *the author of the document is identifiable;*
- *the documents contain third party personal information;*
- *release of the documents would cause stress on the third party; and*
- *no public purpose would be achieved through release.¹*

As discussed in ‘FG’ and *National Archives of Australia* [2015] AICmr 26, other relevant factors include:

- *the nature, age and current relevance of the information*
- *any detriment that disclosure may cause to the person to whom the information relates*
- *any opposition to disclosure expressed or likely to be held by that person*
- *the circumstances of an agency’s collection and use of the information*

¹ FOI Guidelines [6.142]

- *the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act*
- *any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and*
- *whether disclosure of the information might advance the public interest in government transparency and integrity.*²

Document B contains personal information in the form of middle names of individuals currently employed at ASIC, as well as the full names of individuals who are no longer employed at ASIC. I am satisfied that it would be unreasonable to disclose this personal information for the following reasons:

- the information is not well known or available from publicly accessible sources;
- disclosure is unlikely to advance the public interest in government transparency and integrity;
- disclosure of the information could reasonably be expected to cause detriment to the individuals to whom the information relates;
- the individuals would be likely to object to disclosure; and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.³

I therefore find the above information conditionally exempt under section 47F of the FOI Act.

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. I am therefore required to consider whether disclosure would be contrary to the public interest, taking into consideration s 11B of the FOI Act and part 6 of the FOI Guidelines.

I have had regard to the four factors favouring access in the public interest which are set out in section 11B(3) of the FOI Act, as follows:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her personal information.

I consider that disclosure of the conditionally exempt material would only minimally promote the objects of the FOI Act. The names of former staff members would not inform the community of current authorisation arrangements under s 23 while the middle names of staff members is highly personal information that the individuals concerned would have a reasonable expectation would not be disclosed.⁴ I do not consider that it would inform debate on a matter of public importance, promote effective oversight of public expenditure or allow you to access your own personal information.

While the FOI Act does not list any factors weighing against disclosure, a non-exhaustive list of

² FOI Guidelines [6.143]

³ FOI Guidelines [3.36]

⁴ *'PJ' and Australian Federal Police (Freedom of information)* [2018] AICmr 64 [39]-[42]

these factors is set out at paragraph 6.22 of the FOI Guidelines. I consider the following factors to be relevant in relation to the conditionally exempt material:

- could reasonably be expected to prejudice the protection of an individual's right to privacy;⁵ and
- could reasonably be expected to harm the interests of an individual or a group of individuals.⁶

Based on these factors, I have decided that the public interest is weighted more heavily against disclosure and that giving access to the conditionally exempt material would, on balance, be contrary to the public interest.

Section 22(2) of the FOI Act requires an agency to give an applicant access to an edited copy of a document, with exempt or irrelevant matter deleted, if it is reasonably practicable for the agency to prepare the edited copy, having regard to:

- the nature and extent of the modification (s 22(1)(c)(i)); and
- the resources available to modify the document (s 22(1)(c)(ii)).

In accordance with section 22, I have redacted the material in Document B that I have found exempt under section 47F.

In addition, I have considered that Document A contains information that is outside the scope of your request. As you have requested a copy of the current arrangements in relation to section 23 of the FOI Act I have redacted delegations, nominations, authorisations and appointments relating to other legislation, in accordance with s 22 on the basis that this information is outside the scope of your request.

Review Rights

In the event that you are dissatisfied with the decision:

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 the Senior Manager, Freedom of Information Team, GPO Box 9827, Melbourne VIC 3001 or by email to foirequest@asic.gov.au

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 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

⁵ FOI Guidelines [6.22(a)]

⁶ FOI Guidelines [6.22(k)]

Jessica Zhang

Freedom of Information Officer

Australian Securities and Investments Commission

(Authorised decision-maker pursuant to section 23(1) of the FOI Act)

Attachments

1. *Schedule of Documents*
2. *Delegation, Nomination, Authorisation, Appointment and Approval of Arrangements (Chair of ASIC) Instrument 2018/0929 (Document A)*
3. *Business rules for the exercise of powers under the FOI Act (Document B)*

Schedule of Documents

No.	Description	Date	Decision on Access	Relevant Sections
1	Instrument of authorisation titled 'Delegation, Nomination, Authorisation, Appointment and Approval of Arrangements (Chair of ASIC) Instrument 2018/0929'	16 October 2018	Partial release	S 22
2	ASIC Business Rules relating to section 23 of the FOI Act delegations titled 'Business rules for the exercise of powers under the FOI Act'		Partial release	S 47F