



ASIC

Australian Securities & Investments Commission

3 January 2019

Mr Phillip Sweeney

BY EMAIL: foi+request-5144-53df6c54@righttoknow.org.au

Dear Mr Sweeney

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Freedom of Information Decision

I refer to your email received by the Australian Securities and Investments Commission ('ASIC') on 5 December 2018 in which you seek access to the following under the *Freedom of Information Act 1982* (Cth) (the 'Act'):

'copies of the following documents filed by ASIC in NSD1654/2018

*23 October 2018 - Particulars (including Further and better Particulars)
12 October Amended Document
12 October Amended Document'*

In my email to you on 5 December 2018, I acknowledged receipt of this request and advised that I am the authorised decision maker pursuant to section 23 of the Act.

Decision

I have undertaken a search of ASIC's records and identified the three documents falling within the scope of your request.

I have decided to **refuse** access in full to all the requested documents. The reasons for my decision are set out below.

Reasons for decision

Section 12(1)(b) of the Act provides that a person is not entitled to obtain access to 'a document that is open to public access as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge.'

The requested documents have been filed in the Federal Court of Australia under proceeding number NSD1654/2018.

Accordingly, they are open to public access, pursuant to rule 2.32 of the *Federal Court Rules 2011* (Cth). This rule sets out the limited circumstances in which a non-party may inspect documents filed in a Federal Court proceeding. This access is subject to a fee as set out in item 123 of Schedule 1 to the *Federal Court and Federal Circuit Court Regulation 2012* (Cth).

For further information on how to make an access request to inspect Federal Court documents, please visit the following Federal Court website at:

<<http://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents/how-to-apply>>.

For the reasons discussed above, I find that section 12(1)(b) of the Act applies to the requested documents. Therefore, these documents are excluded from the access provisions of the Act.

Review rights

If you are not satisfied with this decision, you may:

- within 30 days after the day on which you have been notified of this decision, apply in writing to ASIC for another ASIC officer to review this decision. This is pursuant to section 54B of the Act. The application should be addressed to the Senior Manager, Freedom of Information Team, GPO Box 9827, Melbourne VIC 3001 or sent by email to foirequest@asic.gov.au;
- 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 the decision. This is pursuant to 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; or
- lodge a complaint with the OAIC in relation to ASIC's conduct concerning your request. You may contact the OAIC as described above.

Yours faithfully,

Jeremiah Leong

Authorised decision-maker pursuant to section 23(1) of the FOI Act, on behalf of the Australian Securities and Investments Commission