



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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15 April 2019

Phillip Sweeney
By email only: [foi+request-5309-
f2cf4bce@righttoknow.org.au](mailto:foi+request-5309-f2cf4bce@righttoknow.org.au)

Dear Mr Sweeney

Freedom of Information Request No. FOI 054-2019

I refer to your request dated 15 March 2019 under the *Freedom of Information Act 1982 (FOI Act)* in which you seek access to documents in the possession of the Australian Securities and Investments Commission (**ASIC**).

Your request seeks access to the following documents concerning the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Royal Commission**):

'The following was reported in the media following the release of the final report of the Hayne Royal Commission:

"Hayne recommended 24 cases of misconduct be referred to the financial regulators for consideration of civil or criminal action. The referrals involve almost all of the major banks except Westpac. ASIC says it has "prioritised" the cases, but would not comment in further detail."

Therefore there must be some formal correspondence from Royal Commissioner Hayne, the "office" of the Royal Commissioner, or by someone acting on behalf of the Royal Commissioner to ASIC.

The correspondence may have been addressed to the ASIC Chairman, James Shipton, the "office" of the Chairman, or to some other staff person at ASIC.

The document I seek is a copy of the correspondence in which Royal Commissioner Hayne has made such a recommendation.'

I have interpreted your reference to Commissioner Hayne's recommendations to mean the referrals of potential misconduct by financial services entities to the relevant agency, pursuant to paragraph (a) of the Royal Commission's Terms of Reference. The Terms of Reference relevantly authorised the Royal Commission to decide whether any conduct 'might have amounted to misconduct and, if so, whether the question of criminal or

other legal proceedings should be referred to the relevant Commonwealth, State or Territory agency.¹

These referrals were published in Volume 2 of the Final Report of the Royal Commission (**Final Report**).² The Final Report was tabled in Parliament on 4 February 2019. Your request states your view that there must exist some correspondence from the Royal Commission addressed to ASIC 'in which Royal Commissioner Hayne has made such a recommendation.'

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

Decision

I have conducted searches of ASIC's records and have not located any documents falling within the scope of your request. My decision is to therefore refuse your request for access to documents under s 24A of the FOI Act on the basis that all reasonable steps have been taken to find these documents and I am satisfied that no such documents exist. The reasons for my decision are set out below.

Information considered

In reaching my decision, I have considered the following:

- the FOI Act, in particular s 24A;
- the Royal Commission's Terms of Reference;
- the Final Report;
- the Australian Information Commissioner's FOI Guidelines issued under s 93A of the FOI Act (**FOI Guidelines**); and
- the terms of your request.

Section 24A of the FOI Act

Section 24A of the FOI Act relevantly provides:

Document lost or non-existent

(1) 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:*
 - (i) is in the agency's or Minister's possession but cannot be found; or*
 - (ii) does not exist.*

I have conducted searches of ASIC's records and have not located any documents falling within the scope of your request.

¹ *Letters Patent*, 14 December 2017, (a)

² Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report* (2019), vol 2: case studies

As noted above, the referrals of potential misconduct have been published in the Final Report. You may access the Final Report of the Royal Commission at the following link:

<https://financialservices.royalcommission.gov.au/Pages/reports.aspx>.

For these reasons, I am satisfied that all reasonable steps have been taken to locate the documents relevant to your request and I am satisfied that the documents do not exist. I have therefore decided to refuse your request pursuant to s 24A(1)(b)(ii) 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 an internal review of my decision under section 54B of the FOI Act. This review is an independent process conducted by a Senior Freedom of Information Officer at ASIC. This request should be addressed to me or to the Senior Manager, Freedom of Information, GPO Box 9827, Brisbane QLD 4001 or by email to foirequest@asic.gov.au.
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 enquiries@oaic.gov.au 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 set out above.

If you have any questions or wish to discuss, please contact me on Jessica.Zhang@asic.gov.au or (03) 9280 4156.

Yours sincerely

Jessica Zhang

Freedom of Information Officer

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