



**ASIC**  
Australian Securities &  
Investments Commission

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and Investments Commission**

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8 May 2019

Mr Phillip Sweeney

Our ref: FOI 054-2019

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

Dear Mr Sweeney

### **Request for Internal Review – Notice of Decision**

I refer to your email to the Australian Securities and Investments Commission ('ASIC') dated 17 April 2019 in which you sought an internal review of a decision made in relation to your request to ASIC under the *Freedom of Information Act 1982* (Cth) ('the Act').

In your email dated 15 March 2019, you made the following request to ASIC:

*"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.*

On 15 April 2019, the original decision-maker refused you access in full to documents the subject of your request on the basis that the documents did not exist pursuant to section 24A(1)(b)(ii).

I advise that I am an officer authorised to undertake an internal review of this decision, pursuant to section 23 of the Act.

## Decision

In reaching my decision, I have considered the following:

- the Act, particularly section 24A;
- the Freedom of Information Guidelines issued by the Australian Information Commissioner;
- the terms of the Request;
- the notice of decision dated 15 April 2019 made in relation to your original request under the Act dated 15 March 2019;
- the outcome of searches conducted internally within ASIC; and
- the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry ('**Final Report**').

In undertaking the internal review of the original decision, I made inquiries internally within ASIC with:

- staff responsible for managing ASIC's engagement with the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry ('**Royal Commission**'); and
- staff with access to correspondence received by ASIC's Commission, including ASIC's Chairman Mr James Shipton.

In both instances, those staff members indicated that they had no record of receiving, nor were they aware of, any correspondence from Commissioner Kenneth Hayne (or any agent) in relation to the referrals.

Therefore, I am satisfied that ASIC has not received any correspondence from Commissioner Hayne (or an agent) concerning the referrals made by Commissioner Hayne in Volume 2 of the Final Report.

Accordingly, I **affirm** the decision made on 15 April 2019 on the basis that I am satisfied that all relevant searches have been undertaken and that no documents exist which fall within the scope of your request. This is pursuant to section 24A(1)(b)(ii).

**Review rights**

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 Act. You may contact the OAIC by post at GPO Box 5218 Sydney NSW 2001, by email 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 concerning your request. You may contact the OAIC as described above.

Yours faithfully,



**Jeremiah Leong**

**Australian Securities and Investments Commission**