



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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5 August 2019

Phillip Sweeney

By email only: foi+request-5543-50cc11c6@righttoknow.org.au

Dear Mr Sweeney

Freedom of Information Request No. FOI 152-2019

I refer to your request dated 30 July 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:

'The documents I seek are copies of any emails or copies of file notes of phone conversations with reporter James Frost of the Australian Financial Review in relation to proceedings in the Federal Court of Australia (NSW) before Justice Yates {NSD1654/2018} and/or the Interested Person, Phillip Charles Sweeney.

The search period is from 2 May 2019 to the present.'

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

Decision

The relevant ASIC teams have undertaken searches for documents that fall within the scope of your request and have not found any responsive documents. 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 responses from the relevant ASIC teams;
- 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 requested that the Media Unit, Financial Services Enforcement team and the Chief Legal Office conduct searches of ASIC's records for documents within the scope of your request. They have advised that they have not located any documents falling within scope. 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.

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)