



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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9 August 2019

Mr Phillip Sweeney

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

Our ref: FOI 152-2019

Dear Mr Sweeney

Freedom of Information Decision

I refer to your email to the Australian Securities and Investments Commission ('ASIC') dated 30 July 2019 in which you made a request ('**the Request**') to ASIC under the *Freedom of Information Act 1982 (Cth)* ('**the Act**').

You sought access to:

'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 {NSD 1654/2018} and/or the Interested Person, Phillip Charles Sweeney. The search period is from 2 May 2019 to the present.'

On 5 August 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(1)(b)(ii);
- the guidelines issued by the Australian Information Commissioner, pursuant to section 93A of the Act ('**the FOI Guidelines**'); and
- the terms of the Request; and

- the outcome of searches undertaken at first instance and further searches upon internal review.

In undertaking an internal review of the original decision, I made additional inquiries internally with ASIC staff across a number of ASIC teams.

Those ASIC staff members informed me that they had no record of receiving, nor were they were aware of, any emails exchanged between ASIC and reporter Mr James Frost of the Australian Financial Review in relation to proceedings in the Federal Court of Australia (NSW) before Justice Yates {NSD 1654.

Those ASIC staff members also confirmed that no file notes of phone conversations between ASIC and Mr Frost were generated in relation to this matter. This is inclusive of the search period set out in your request.

Accordingly, I **affirm** the decision made on 5 August 2019 on the basis that I am satisfied that all reasonable steps have been taken to find the documents and I am satisfied 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 30 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 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