



ASIC
Australian Securities &
Investments Commission

**Australian Securities
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Phillip Sweeney

By email: foi+request-6439-42573ead@righttoknow.org.au

Our Reference: FOI 110-2020

10 July 2020

Dear Mr Sweeney

**Freedom of Information Request No. 110-2020
Notice to Identify Documents under Section 24AB of the Act**

I refer to five (5) emails you sent to ASIC dated between 28 June 2020 and 30 June 2020, seeking access to documents under the *Freedom of Information Act 1982 (FOI Act)*.

The five FOI requests to which this notice relates are described in the **attached** schedule. The requests seek access to documents that fall within one or more of the following categories:

- A. Documents concerning Trust Deeds generally (requests 4 & 5); and
- B. Documents specifically concerning Trust Deed dated 23 December 1913 in the State of South Australia and all amending Deeds executed on or before 25 March 1985 (requests 1, 2, & 3).

Section 24(2) of the FOI Act

Section 24(2) of the FOI Act states that in deciding whether a practical refusal reason exists, two or more requests may be treated as a single request if the requests relate to the same document or documents, or the subject matter is substantially the same for the requests.

In my view the five FOI requests described in the attached schedule may be treated as a single request because the subject matter of the five requests is the same or substantially the same in all the requests.

I am satisfied that the five requests relate to documents the subject matter of which is substantially the same for all requests. Accordingly, I have, for the purposes of this notice, treated the five requests described in the attached schedule as a single request (**the Request**). As ASIC received the first request on 28 June 2020, ASIC will treat the Request as being received on 28 June 2020.

Section 15(2)(b) of the FOI Act

I am writing to advise you that your request does not satisfy the requirement set out in section 15(2)(b) of the FOI Act which states that a request for access to a document must '*provide such information concerning the document as is reasonably necessary to enable a responsible officer of an agency... to identify it*'. As section 15(2)(b) has not been met ASIC may, in accordance with section 24(1)(b) of the Act, refuse to process your application.

In its current form, it would be my intention to refuse access to the documents sought in the Request on this practical refusal ground. However, to assist you to make a valid request I make the following comments.

The Request (at request 5, part (i) and (ii)) seeks access to "a copy of any legal opinion in the possession of ASIC or similar document...".

Your request is extremely broad in nature and encompasses any external and internal legal opinion or advice ASIC would have received, composed or collected without a specified timeframe. I am also unable to identify what might be a "similar document". The phrase 'or similar document' is broadly stated and requires the exercise of a subjective judgment to effectively identify relevant documents.

As such, I find it difficult to identify the documents you are seeking given the broad and ambiguous nature of your request.

For the reasons stated above, your request in its current form does not adequately identify the documents sought and it would therefore be my intention to refuse your request given that a practical refusal reason exists within the meaning of section 24AA(1)(b) of the FOI Act.

Request consultation process

The purpose of this letter is to provide you with an opportunity to revise your request so that the practical refusal reason no longer exists before a final decision is made. Should you wish to submit a revised request please take into consideration the issues raised in this notice to ensure that they are addressed.

Timeframe

The statutory timeframe for notifying an applicant of a decision on a request for access under the FOI Act is 30 days from the day the agency receives the request. Please note that in accordance with section 24AB(8) of the FOI Act, the time for processing your request is suspended from the day that you receive this letter, and resumes on the day after ASIC receives from you one of the following:

- written notification that you wish to withdraw the request;
- a revised written request addressing the matters raised above; or
- written notification that you do not wish to revise your request.

If you choose to do one of the following actions above mentioned, you must do so **within 14 days** of the date of this letter (the **consultation period**). If I have not heard from you by the end of the consultation period, your request will be taken to be withdrawn in accordance with section 24AB(7) of the FOI Act.

Should you wish to provide written notification to withdraw the request this must also be done within the consultation period. A written notification of withdrawal is effective at the time of the withdrawal. Section 24AB(7) provides that a withdrawal is effective at the end of the consultation period if the applicant does not take any action.

During the consultation period you may wish to seek assistance in reframing your request. If you have any questions or wish to discuss, please contact me by email at krystal.fung@asic.gov.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Krystal Fung', written in a cursive style.

Krystal Fung
(Authorised decision maker pursuant to subsection 23(1) of the FOI Act)
For the Australian Securities and Investments Commission

Schedule of Phillip Sweeney requests 28 June 2020 to 30 June 2020

Request No.	Date of Request	Documents sought in Request
1.	28 June 2020	"...The document I seek is a copy of the letter dated around mid-2010 in which Warren Day reported on the "investigation" into his own "Straw Man" complaint."
2.	29 June 2020	"...The document I seek is a copy of the response sent by Ms Tenaski to former Senator John Williams sometime after 6 January 2014."
3.	29 June 2020	<p>"...The first document I seek is a copy of the response sent by Warren Day to former Senator John Williams sometime after 18 July 2013.</p> <p>I am also seeking a copy of the original Trust Deed made on the 23 December 1913 in the State of South Australia when the original sponsoring employer was Elder Smith & Co Ltd that should have been obtained by Warren Day in 2013 or at a later date by ASIC."</p>
4.	30 June 2020	"...The document I seek is a copy of the response sent by Gerard Fitzpatrick to former Senator John Williams sometime after 28 January 2014 where no mention of subsection 1017C(5) was made."
5.	30 June 2020	<p>"...The documents I seek are:</p> <p>(i) A copy of any legal opinion in the possession of ASIC or similar document that would dispute that "the governing rules" of a superannuation scheme would not include the original Trust Deed and all VALIDLY executed amending Deeds {whether referred to as Deeds of Variation or Deeds of Modification}.</p> <p>(ii) A copy of any legal opinion in the possession of ASIC or similar document that would dispute that the trustee of the Australia Post Superannuation Scheme {APSS} is wrong on its "warning" concerning "the current compilation of the rules" as only being a handy reference and not "the final approved authority if there are any discrepancies"."</p>