



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Office address (inc courier deliveries):
Level 7, 120 Collins Street,
Melbourne VIC 3000

Mail address for Melbourne office:
GPO Box 9827,
Brisbane QLD 4001

Tel: +61 1300 935 075
Fax: +61 1300 729 000

www.asic.gov.au

Mr Phillip Sweeney

By email only:

foi+request-6476-4c8f8d10@righttoknow.org.au

Our Reference: 119-2020

10 August 2020

Dear Mr Sweeney,

Freedom of Information Request No. 119-2020

Notice of Decision

I refer to your request dated 10 July 2020 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 states:

The documents I seek are a copy of the most recent audited financial statements and the Auditor's Report on The MLC Super Fund {R1077223} in ASIC's possession"

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

Decision

A search of ASIC's records was conducted. I confirm that ASIC does not hold any documents which fit the terms of your request.

Therefore, my decision is to refuse your request under s24A(1)(b)(ii) of the FOI Act.

Information considered

In reaching my decision, I have considered the following:

- the FOI Act, in particular section 24A;
- the results from searches conducted by ASIC staff;
- the Australian Information Commissioner's FOI Guidelines issued under s 93A of the FOI Act (**FOI Guidelines**);
- the terms of your request.

Section 24A of the FOI Act

Section 24A of the FOI Act relevantly provides:

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.*

The MLC Super Fund

You refer to "*The MLC Super Fund {R1077223}*" in your request. I conducted a search and there is no record of this entity on ASIC's registers.

However, I understand that you are referring to the entity **MLC Super Fund**, a registrable superannuation entity (RSE) registered with the Australian Prudential Regulation Authority (**APRA**) with registration number "R1077223" (**MLC Super Fund**).

A register of all RSEs and RSE licensees regulated by APRA in accordance with the Superannuation Industry (Supervision) Act can be accessed on APRA's website, and the entity MLC Super Fund can be found on that register. Please see <https://www.apra.gov.au/register-of-superannuation-institutions>.

As such, ASIC does not have a record of the lodgement under *Corporations Act 2001* of audited financial statements and auditor's report of MLC Super Fund as it is not required to be lodged with ASIC.

Searches conducted

Although ASIC does not have a record of the lodgement of audited financial statements and auditor's report of MLC Super Fund, I made enquiries of the relevant ASIC teams to determine whether this document may have been provided to ASIC in the course of its surveillance and/or enforcement related activities.

The teams searched relevant databases, and each confirmed there was no record of receiving audited financial statements and the auditor's report of The MLC Super Fund.

Accordingly, I am satisfied that all reasonable steps have been undertaken to find the document and that the document does not exist in ASIC's possession under 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 foidr@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 at fleur.forsyth@asic.gov.au.

Yours sincerely,



Fleur Forsyth

(Authorised decision maker under section 23(1) of the FOI Act)