



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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17 August 2020

Mr Phillip Sweeney

By email only: foi+request-6478-3ad668e8@righttoknow.org.au

Dear Mr Sweeney

Request for internal review – Notice of decision IR 123-2020

I refer to your request dated 12 July 2020 under the *Freedom of Information Act 1982* (the **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:

“a copy of the title page of any law dictionaries in the possession of ASIC that will identify the name and edition of that or those law dictionaries”

By letter dated 11 August 2020 you were advised of ASIC's decision (the **Decision**) in relation to your request.

On 11 August 2020 you requested a review of the Decision under s 54B of the FOI Act.

Decision

I am an authorised decision maker for the purposes of section 23(1) of the FOI Act.

I have taken the following material into account in making my decision:

- the FOI Act (specifically sections 4 and 15);
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**the FOI Guidelines**);
- the notice dated 11 August 2020 prepared by the original decision maker; and
- Your email of 11 August 2020.

I have reviewed the material related to this matter and have decided to **affirm** the Decision of 11 August 2020 for the reasons set out below.

Reasons for Decision

Section 15(1) of the FOI Act specifically provides a right of access for applicants to documents of an agency by providing that:

'a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.'

To assist in determining the extent to which material can be categorised as a document of the agency, reference is made to section 4 of the FOI Act which provides a list of terms and the meanings which they are given under the FOI Act.

Section 4(1) provides that a document is the **document of an agency** if:

(a) the document is in the possession of the agency, whether created in the agency or received in the agency;

Section 4(1) further provides that a **document** includes:

(a) any of, or any part of any of, the following things:

(i) any paper or other material on which there is writing;

(ii) a map, plan, drawing or photograph;

(iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;

(iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

(v) any article on which information has been stored or recorded, either mechanically or electronically;

(vi) any other record of information; or

(b) any copy, reproduction or duplicate of such a thing; or

(c) any part of such a copy, reproduction or duplicate;

but does not include:

(d) material maintained for reference purposes that is otherwise publicly available; or

(e) Cabinet notebooks.

As shown, the definition of a document as provided in section 4(1) of the FOI Act specifically excludes material that is maintained for reference purposes and is otherwise publicly available from the definition of a document of an agency.

I note that the Information Commissioner has specifically indicated in the FOI Guidelines at 2.32, that *'material maintained for reference purposes that is otherwise publicly available (such as library reference material) and Cabinet notebooks are not 'documents'.'*

I have therefore concluded that your request is for material that is specifically excluded from the definition of a **document of the agency** and therefore falls outside of the scope of the FOI Act.

On the basis of the above I **affirm** the decision of the primary decision maker.

Review rights

I provide you with the following information as required by section 26 of the FOI Act.

If you are dissatisfied with my decision 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

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 described above.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'J. Frank', is positioned above the typed name.

Justin Frank
(Authorised decision-maker pursuant to sub-section 23(1) of the FOI Act)