



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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Phillip Sweeney

By email: foi+request-6531-6df2918c@righttoknow.org.au

Our Reference: FOI 152-2020

10 August 2020

Dear Mr Sweeney

**Freedom of Information Request No. 152-2020
Notice to Identify Documents under Section 24AB of the Act**

I refer to three (3) requests you sent to ASIC dated between 26 July 2020 and 28 July 2020, seeking access to documents under the *Freedom of Information Act 1982 (FOI Act)*.

The three 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 your complaint to ASIC, reference 15476/09 (requests 1, 2 & 3)
- B. Documents concerning Trust Deed dated 23 December 1913 and deeds of variations (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 three FOI requests described in the attached schedule may be treated as a single request because the subject matter of the three requests is the same or substantially the same.

I am satisfied that the three requests relate to subject matter of which is substantially the same for all requests. Accordingly, I have for the purposes of this notice, treated the three requests described in the attached schedule as a single request (**the Request**). As ASIC received the first request on 26 July 2020, ASIC will treat the Request as being received on 26 July 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 1) seeks access to documents that "would reveal to financial journalists and the general public the contraventions of legislation administered by ASIC and the general law in these proceeding in the Federal Court where the day before Mr Day claimed to the former Chair of the Standing Committee on Economics that ASIC had no jurisdiction involving this particular trustee of a number of regulated superannuation funds." I am unable to identify what documents "would reveal" such information. Your Request (at request 1) is extremely ambiguous in nature, as such I find it difficult to identify documents you are seeking.

The Request (at request 2) seeks access to documents that Mr Warren Day "relied on to form a view that the type of superannuation benefit was a one-off "payout" instead of the actual lawful benefit as confirmed by the original Trust Deed and VALID amending Deeds which are regular "payouts" {ie pension payments} both for the male fund member and then to his widow in the form of a reversionary pension {survivorship pension} should the male fund member predecease his wife." The Request (at request 2) is made in reference to ASIC's response to The Hon Sarah Henderson MP dated 5 September 2018 and to documents provided by the trustee or sponsoring employer.

I am unable to identify what documents might have been relied on by Mr Day to "form a view" as this is subjective in nature and the mere presence of a document on ASIC's files cannot authoritatively determine that Mr Day used the document(s) to form this view.

The Request (at request 3) seeks access to copies of "any correspondence between ASIC and the Superannuation Complaints Tribunal on which Mr Day would have based his representation to the previous Chair of the Standing Committee on Economics in Mr Day's letter of 5 September 2018." I am unable to identify what documents Mr Day "would have based his representation" on as this is subjective in nature and the mere presence of a document on ASIC's files cannot authoritatively determine that Mr Day used the document(s) to base his representation.

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,



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 26 July 2020 to 28 July 2020

Request No.	Date of Request	Documents sought in Request
1.	26 July 2020	"The documents I seek are copies of documents that would reveal to financial journalists and the general public the contraventions of legislation administered by ASIC and the general law in these proceeding in the Federal Court where the day before Mr Day claimed to the former Chair of the Standing Committee on Economics that ASIC had no jurisdiction involving this particular trustee of a number of regulated superannuation funds."
2.	27 July 2020	"The document or documents I seek is a copy of the document or documents provided by the trustee or the sponsoring employer to ASIC that Mr Day relied on to form the view that the type of superannuation benefit was a one-off "payout" instead of the actual lawful benefit as confirmed by the original Trust Deed and VALID amending Deeds which are regular "payouts" {ie pension payments} both for the male fund member and then to his widow in the form of a reversionary pension {survivorship pension} should the male fund member predecease his wife."
3.	28 July 2020	"The documents I seek are copies of any correspondence between ASIC and the Superannuation Complaints Tribunal on which Mr Day would have based his representation to the previous Chair of the Standing Committee on Economics in Mr Day's letter of 5 September 2018"