



**ASIC**  
Australian Securities &  
Investments Commission

**Australian Securities  
and Investments Commission**

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Phillip Sweeney

**By email:** [foi+request-6564-  
11bcaa7a@righttoknow.org.au](mailto:foi+request-6564-11bcaa7a@righttoknow.org.au)

Our Reference:      FOI 153-2020

1 September 2020

Dear Mr Sweeney

**Freedom of Information Request No. 153-2020**

**Acknowledgement of Request**

I refer to your request dated 2 August 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 seeks access to the following:

*"A copy of an amending Deed to the Trust Deed of the Plum Superannuation Fund that should have been executed in late February 2014 if a bona fide 'successor fund transfer' had been completed as Mr Ged Fitzpatrick represented to Senator Williams."*

On 18 August 2020, you further clarified that the amending Deed for the Plum Superannuation Fund would be dated between late January 2014 to late February 2014. As such, I have taken your request to be for a copy of an amending Deed to the Trust Deed of the Plum Superannuation Fund that was executed sometime in late January to late February 2014.

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

**Decision and reasons for the decision**

In your request dated 2 August 2020, you provide a series of assertions of opinion and general commentary relating to your previous dealings with ASIC. I do not consider any of these statements as relevant to the determination of your request. This type of information is not required under the FOI Act and impedes on ASIC's processing of your request efficiently. Please see the Office of the Information Commissioner's [how to make an FOI request](#) webpage for further information.

I have conducted a search in response to your request and have found no documents falling within the terms of your request were identified. As a result, your request is refused in line with paragraph 24A(1)(b)(ii) of the FOI Act, which provides:

**Requests may be refused if documents cannot be found, do not exist or have not been received**

- (1) 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 right of access under section 11 of the FOI Act is to a 'document of an agency.' This is defined in the section 4 of the FOI Act as:

- "a document is a *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; or
  - (b) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document."

The document is not a document created by ASIC and is not in the possession of ASIC. Section 6C of the FOI Act is not relevant to this document.

I have searched our electronic records, including ASIC's case management systems and made enquiries with relevant staff and am satisfied that ASIC does not have the document, or the document does not exist.

**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](mailto: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 [enquiries@oaic.gov.au](mailto: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 in the handling of this request. You may contact the OAIC as set out above.

If you have any questions, please contact me at [krystal.fung@asic.gov.au](mailto:krystal.fung@asic.gov.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Krystal Fung', with a stylized, cursive script.

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