



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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Phillip Sweeney

By email: foi+request-6566-480d4211@righttoknow.org.au

Our Reference: FOI 148-2020

1 September 2020

Dear Mr Sweeney

**Freedom of Information Request No. 148-2020
Acknowledgement of Request**

I refer to your request dated 3 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:

"The document I seek is a copy of a determination of the Tribunal that made a ruling on my "payout" or final average salary {FAS} as alleged by Mr Day in his letter of 5 September 2018."

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 3 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 taken the following material into account in making my decision:

- the FOI Act (specifically section 24A);
- the functional responsibilities of ASIC and the Superannuation Complaints Tribunal (**SCT**);
- the guidelines (**FOI Guidelines**) issued by the Office of the Australian Information Commissioner (**OAIC**) under section 93A of the FOI Act; and
- the terms of your request.

The reasons for my decision are set out below.

I have conducted a search in response to your request and have found no documents falling within the scope 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 subject matter of the document you are seeking does not fall within the specific functional responsibilities of ASIC. A document that could fall within the scope of your request 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. As your request is in relation to your complaint to the SCT regarding your payout or final average salary, this falls more appropriately with the SCT's remit.

Therefore, as the subject matter of your request does not fall within the functional responsibilities of ASIC, your request has been refused pursuant to section 24A(1)(b)(ii) of the FOI Act.

It is open to you to apply under the FOI Act directly to the SCT for documents in relation to your complaint to the SCT. Details of how to lodge an FOI request with the SCT can be found here: <https://sct.gov.au/pages/legislation/making-an-application-under-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 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.

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