



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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Mr Phillip Sweeney

By email only:

foi+request-6601-30e6b2ba@righttoknow.org.au

Our Reference: FOI 164-2020

27 August 2020

Dear Mr Sweeney,

Freedom of Information Request No. 164-2020

Notice of Decision

I refer to your request made under the *Freedom of Information Act 1982* (**FOI Act**) dated 15 August 2020 in which you seek access to documents in the possession of the Australian Securities and Investments Commission (**ASIC**).

Your request sought the following:

"Superannuation funds or schemes that are not established by statute are established as "trusts".

The general laws of trusts in Australia are very similar to those in the United Kingdom as well as are the laws of powers {eg "Thomas on Powers" by Geriant Thomas}.

However statutory laws related to superannuation trusts are different.

A popular Australia Authority is "Equity and Trusts in Australia".

The document I seek is a copy of the title page of any edition of "Equity and Trusts in Australia" by Gino Dal Pont {Lawbooks Co} as of 14 August 2020 that would confirm whether ASIC has possession of such popular Australian Authority as well as which edition or editions ASIC has in its possession. There have been seven editions of "Equity and Trusts in Australia".

IMPORTANT: I am not seeking a copy of the whole book which is a publically available document. I am only seeking a copy of the title page.

Title pages by themselves are not a publically available document."

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

Decision

I have decided to refuse your request for access to a copy of the title page of any edition of *Equity and Trusts in Australia* by Gino Dal Pont on the basis that it is not a document of an agency as defined under section 4(1) of the FOI Act.

As part of my decision, I have considered:

- the FOI Act, in particular ss 4(1), 11 and 15;
- the terms of your FOI request dated 15 August 2020; and
- the Australian Information Commissioner's FOI Guidelines issued under s 93A of the FOI Act (**FOI Guidelines**).

My reasons for refusing access to the document are set out below.

Reasons for the decision

Section 11 of the FOI Act provides that every person has a legally enforceable right to obtain access to a **document of an agency**, other than an exempt document.

A person who wishes to obtain access to a document of an agency may request access to the document, as provided by section 15(1) of the FOI Act.

To determine whether a document is a **document of an agency**, reference is made to the definition in section 4(1) of the FOI Act, which provides that:

*a document is a **document of an agency** if:*

- (a) the document is in the possession of the agency, whether created by the agency or received in the agency.*

Section 4(1) of the FOI Act provides that the definition of 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*

[my emphasis added].

The definition of a **document** in section 4(1) of the FOI explicitly excludes material maintained for reference purposes and is otherwise publicly available.

Further, I note that the FOI Guidelines at paragraph 2.32 states:

Material maintained for reference purposes that is otherwise publicly available (such as library reference material) and Cabinet notebooks are not 'documents' (s 4(1)).

I am satisfied that the requested material, that is, the title page of any edition of *Equity and Trusts in Australia* by Gino Dal Pont, and the book itself, falls within the definition of 'material maintained for reference purposes and is otherwise publicly available'. The book is a legal reference text. Its title page is publicly available as part of the book and can be viewed online with an internet search, for example, a search of Google.

Therefore, I consider the requested material is excluded from the definition of a **document** under section 4(1) of the FOI Act.

For this reason, I am satisfied that your request is for material that falls outside the access provisions of the FOI Act, as the requested material is not **a document of an agency** as defined under s 4(1).

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



(Authorised decision-maker pursuant to subsection 23(1) of the FOI Act)