



**ASIC**  
Australian Securities &  
Investments Commission

**Australian Securities  
and Investments Commission**

Office address (inc courier deliveries):  
Level 7, 120 Collins Street,  
Melbourne VIC 3000

Mail address for Melbourne office:  
GPO Box 9827,  
Brisbane QLD 4001

Tel: +61 1300 935 075

Fax: +61 1300 729 000

[www.asic.gov.au](http://www.asic.gov.au)

29 September 2020

Phillip Sweeney

By email: [foi+request-6658-7a56998f@righttoknow.org.au](mailto:foi+request-6658-7a56998f@righttoknow.org.au)

Dear Mr Sweeney

**Freedom of Information Request No. FOI 173-2020**

I refer to your request for access to documents made under the *Freedom of Information Act 1982 (FOI Act)* dated on 30 August 2020 in which you requested access to documents in the possession of the Australian Securities and Investments Commission (**ASIC**).

Your request sought access to the following:

*'The Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012 came into effect in 2014 and requires the trustees of regulated superannuation funds, schemes or trusts to make certain 'fund documents' publicly available for download for each fund administered by the trustee on the trustee's website.*

*This enactment added Section 29QB to the Superannuation Industry (Supervision) Act 1993.*

*The document or documents I seek are a or copies copy of any 'Class Order' or Class Orders' Issued by ASIC that extended the compliance date beyond 2014*

*This FOI request does not relate to Section 29QC'*

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 decision**

I have decided to refuse your request for access to the requested material on the basis that this material, Class Orders issued by ASIC, are not a document of an agency as defined under s 4(1) of the FOI Act.

Section 11 of the FOI Act provides a person with a legally enforceable right to obtain access to a document of an agency, other than an exempt document. The definition of 'document' is defined in section 4(1) of the FOI Act to include:

*(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.

Section 4(1) states that 'material maintained for reference purposes that is otherwise publicly available' is excluded from the definition of 'document'. You have requested access to specific Class Orders issued by ASIC.

The Class Orders that you have requested are located online on the Australian Federal Register of Legislation.

Section 15A of the *Legislation Act 2003* (Cth) establishes the Federal Register of Legislation and states:

*'The First Parliamentary Counsel must establish and maintain a register of Acts, legislative instruments and notifiable instruments, to be known as the Federal Register of Legislation.'*

Section 15C of this Act requires the Register to be available to the public on an approved website. The right of access under s 11 of the FOI Act only extends to a 'document of an agency'. Material maintained for reference purposes that is otherwise publicly available is excluded from the definition of 'document' in the FOI Act. The Class Orders you have sought in your request meet the definition of 'material maintained for reference purposes that is otherwise publicly available.'

The Australian Information Commissioner's FOI Guidelines issued under s 93A of the FOI Act (FOI Guidelines) relevantly explain that material maintained for reference purposes that is otherwise publicly available (such as library reference material) are not 'documents' by virtue of s 4(1).<sup>1</sup>

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<sup>1</sup> FOI Guidelines [2.32]

For the above reasons, I am satisfied that the material requested falls outside the access provisions of the FOI Act pursuant to s 4(1).

**Review rights**

If 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 [foidr@oaic.gov.au](mailto: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 queries or wish to discuss, please contact me on [Jessica.Zhang@asic.gov.au](mailto:Jessica.Zhang@asic.gov.au).

Yours sincerely

**Jessica Zhang**

Freedom of Information Officer

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