



**ASIC**  
Australian Securities &  
Investments Commission

**Australian Securities  
and Investments Commission**

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14 October 2020

Phillip Sweeney

By email: [foi+request-6765-f3b6ae7c@righttoknow.org.au](mailto:foi+request-6765-f3b6ae7c@righttoknow.org.au)

Dear Mr Sweeney,

**Notice of Freedom of Information Decision – Ref 192-2020**

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I refer to your email received by the Australian Securities and Investments Commission (**ASIC**) on 30 September 2020 in which you seek access to the following under the *Freedom of Information Act 1982* (Cth) (**FOI Act**):

This Instrument amended

ASIC Superannuation (RSE Websites) Instrument 2017/570

Omit subsection 7(2), substitute:

“(2) Until 30 June 2024, an RSE licensee of a registrable superannuation entity does not have to comply with paragraph 29QB(1)(b) of the Act to the extent that it requires the RSE licensee to make available or update a document referred to in any of paragraphs 2.38(2)(a), (b), (d), (e), (f) and (h) of the Regulations if the document contains information that only relates to the registrable superannuation entity because it relates to a standard employer-sponsored sub-plan.”.

The documents I seek are copies of any correspondence, including telephone file notes, between NULIS Nominees (Australia) Ltd, MLC Ltd, National Australia Bank Ltd of any subsidiary company of NAB and ASIC in relation to:

- ASIC Superannuation (Amendment) Instrument 2018/474, and
- ASIC Superannuation (RSE Websites) Instrument 2017/570

The 30-day statutory time period for processing your request commenced on the day after the day on which your request was received (s 15(5) of the FOI Act). The due date to issue a decision on your request is therefore 30 October 2020.

**Authority to make decision**

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests.

**Decision**

I have conducted searches of ASIC's records and have not located any documents falling within the scope of your request. My decision is to therefore refuse your request for access to documents falling within the scope of your request under s 24A(1)(b)(ii) of the FOI Act on the basis that all reasonable steps have been taken to find these documents and I am satisfied that no such documents exist. The reasons for my decision are set out below.

**Information considered:**

In reaching my decision, I have considered the following:

- the FOI Act, in particular s 24A;
- the Australian Information Commissioner's FOI Guidelines issued under s 93A of the FOI Act (**FOI Guidelines**);
- the terms of your request; and
- searches conducted by ASIC staff.

## Reasons for decision

### Section 24A of the FOI Act

Section 24A of the FOI Act relevantly provides:

Document lost or non-existent

- (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 FOI Guidelines relevantly provide:

Agencies and ministers should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request. What constitutes a reasonable search will depend on the circumstances of each request and will be influenced by the normal business practices in the agency's operating environment or the minister's office. At a minimum, an agency or minister should take comprehensive steps to locate documents, having regard to:

- the subject matter of the documents;
- the current and past file management systems and the practice of destruction or removal of documents;
- the record management systems in place;
- the individuals within an agency or minister's office who may be able to assist with the location of documents, and
- the age of the documents.<sup>1</sup>

I have conducted searches of ASIC's records and have not located any documents falling within the scope of your request.

The following steps were taken to search for relevant documents:

- I conducted a search of ASIC's electronic records utilising ASIC's SharePoint Database;
- I conducted this search broadly for **all** result types; that is, the search was not restricted to specific types of documents but captured all documents held within the SharePoint database; and
- The search was conducted on 1 October 2020, totalling two hours.

I used the following search terms:

- "NULIS Nominees (Australia) Ltd" and "ASIC Superannuation (Amendment) Instrument 2018/474";

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<sup>1</sup> FOI Guidelines [3.89]

- “NULIS Nominees (Australia) Ltd” and “ASIC Superannuation (RSE Websites) Instrument 2017/570”;
- “MLC Ltd” and “ASIC Superannuation (Amendment) Instrument 2018/474”;
- “MLC Ltd” and “ASIC Superannuation (RSE Websites) Instrument 2017/570”;
- “National Australia Bank Ltd” and “ASIC Superannuation (Amendment) Instrument 2018/474”;
- “National Australia Bank Ltd” and “ASIC Superannuation (RSE Websites) Instrument 2017/570”;
- “NAB” and “ASIC Superannuation (Amendment) Instrument 2018/474”; and
- “NAB” and “ASIC Superannuation (RSE Websites) Instrument 2017/570”.

I have reviewed the documents that have appeared as a result of these searches and have not identified any documents falling within the scope of your request.

My decision is to therefore refuse your request for access to documents falling within the scope of your request under s 24A of the FOI Act on the basis that all reasonable steps have been taken to find these documents and I am satisfied that no such documents exist.

### **Limitations of Search**

As your request did not specify any subject matter or activity of ASIC, I was unable to instruct any specific staff members to conduct searches of their emails or stored documents. This was because it was unclear which individual or team may be able to assist with the location of any documents, given the absence of subject matter or speciality.

### **Your review rights**

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision.

#### **Internal review**

Under section 54 of the FOI Act, you may apply in writing to ASIC for an internal review of my decision by another ASIC officer. The internal review application must be made within 30 days of the date of this letter. This request should be addressed to the Senior Manager, Freedom of Information, by email to [foirequest@asic.gov.au](mailto:foirequest@asic.gov.au)

#### **Information Commissioner review**

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online:

[https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR\\_10](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)

email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

post: GPO Box 5218 Sydney NSW 2001

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

**FOI Complaints**

You may lodge a complaint with the Australian Information Commissioner in relation to the conduct of ASIC in the handling of this request. A complaint to the Information Commissioner must be made in writing. Complaints can be lodged in one of the following ways:

online: [https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA\\_1](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1)

email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

post: GPO Box 5218 Sydney 2001

More information about complaints is available on the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.

If you are not sure whether to lodge an Information Commissioner review or an Information Commissioner complaint, the Office of the Australian Information Commissioner has more information at: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>

**Questions about this decision**

If you wish to discuss this decision, I can be contacted by phone or email as below.

Yours sincerely

Haydar Tuncer  
Senior Freedom of Information Officer  
Australian Securities and Investments Commission  
Phone: 03 9280 4416  
Email: [haydar.tuncer@asic.gov.au](mailto:haydar.tuncer@asic.gov.au)