



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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22 December 2020

Phillip Sweeney
By email only: [foi+request-6834-
d7650cf3@righttoknow.org.au](mailto:foi+request-6834-d7650cf3@righttoknow.org.au)

Dear Mr Sweeney

Freedom of Information Request No. FOI 208-2020
Notice of Decision

I refer to your request received by us on 25 October 2020 under the *Freedom of Information Act 1982 (FOI Act)* in which you have sought information from the Australian Securities and Investments Commission (**ASIC**).

Your email seeks access to the following:

The ASIC Chairman, James Shipton, and Deputy Chairman, Daniel Crennan, are required to make 6-monthly written disclosures of their personal business interests, both direct and indirect, to the Responsible Minister as required by Section 123 of the ASIC Act 2001 and related ministerial instructions.

The documents I seek are copies of:

- i. the written disclosures of James Shipton to the Responsible Minister for the period 1 February 2018 to the present; and*
- ii. the written disclosures of Daniel Crennan to the Responsible Minister for the period 16 July 2018 to the present.*

This letter contains notice of my decision in respect of your request.

Decision

I am an authorised decision maker for the purposes of section 23(1) of the FOI Act.

I have identified 11 documents that fall within the scope of your request. These documents are detailed in the attached schedule.

I advise that I have decided to refuse access to all 11 documents under section 47F of the FOI Act.

I have taken the following material into account in making my decision:

- the content of the documents that are the subject of your request and the circumstances under which the documents were provided to ASIC;
- the FOI Act (specifically sections 22 and 47F);
- section 123 of the *Australian Securities and Investments Commission Act* (ASIC Act);
- the submissions from the parties consulted under section 27A of the FOI Act;
- the decisions of the Australian Information Commissioner in 'AB' and *Australian Securities and Investments Commission [2013] AICmr 48 (22 April 2013)* and 'Z' and *Australian Securities and Investments Commission [2013] AICmr 43 (15 April 2013)*; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **FOI Guidelines**).

Exemptions

Section 47F - Public interest conditional exemptions—personal privacy

Each of the 11 documents identified have been exempted under section 47F of the FOI Act which relevantly provides that:

'A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).'

"Personal information" is defined in the FOI Act by reference to section 6 of the *Privacy Act 1988* as:

'information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) Whether the information or opinion is true or not; and*
- (b) Whether the information or opinion is recorded in material form or not.'*

Section 47F(2) sets out factors that must be considered when determining if disclosure would be unreasonable. These factors are as follows:

1. the extent to which the information is well known;
2. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
3. the availability of the information from publicly accessible sources; and
4. any other matters that ASIC considers relevant.

The exempted material includes the details of the personal financial affairs of Mr Shipton and Mr Crennan. Documents 1-6 also contain personal information that pertains to the affairs of other individuals.

I am satisfied that it would be unreasonable to disclose this personal information for the following reasons:

- the information is not well known or available from publicly accessible sources;
- the information was provided with an understanding of confidentiality and each document is marked 'Strictly Private & Confidential'; and
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

I therefore find that the release of the identified material would be unreasonable for the purposes of s47F and the material is therefore conditionally exempt under s47F of the FOI Act.

Conditional exemptions are subject to the public interest test which is considered below.

Public Interest Test

The FOI Act provides that access must be given to a conditionally exempt document unless access would be contrary to the public interest.

As required by s 11A of the FOI Act I have considered whether release of the conditionally exempt material in the documents would, on balance, be contrary to the public interest. In particular, I have had regard to the following factors outlined in s 11B(3) as being factors favouring access to the documents in the public interest:

1. Access to the documents would promote the objects of the FOI Act (including all matters set out in sections 3 and 3A).
2. Access to the documents would inform debate on a matter of public importance.
3. Access to the documents would promote effective oversight of public expenditure.
4. Access to the documents would allow a person to access his or her personal information.

Of the above factors I find factor 1 to be relevant to the identified documents. The objects of the FOI Act include providing for a right of access to information in the possession of Commonwealth government agencies and promoting accountability and transparency in government decision making. In this case, the release of the identified documents would support the objects of the FOI Act by making available information which is held by ASIC.

Against the above factors must be balanced the factors against disclosure. The FOI Act does not specify any factors against disclosure in the public interest however the FOI Guidelines at 6.22 include a non-exhaustive list of factors which may be relevant to these considerations. Of these factors I have

identified two that are particularly relevant to this decision; that is that disclosure:

- could reasonably be expected to prejudice the protection of an individual's right to privacy;
- could reasonably be expected to harm the interests of an individual or group of individuals.

Determining whether disclosure would be contrary to the public interest requires that I weigh the relevant factors to determine where the public interest lies.

I have not taken into account the factors outlined in s 11B(4) of the FOI Act as factors that are irrelevant in deciding whether access to the documents would be contrary to the public interest.

In weighing up the factors against disclosure, I have considered the obligations imposed by section 123 of the ASIC Act for members of ASIC's Commission to provide declarations to the Minister. These documents are not otherwise made publicly available and the requirement under section 123 does not contemplate a further distribution of the information provided to the Minister.

I note that the Information Commissioner has previously considered the issue of the release of declarations made under section 123 of the ASIC Act in 'AB' and Australian Securities and Investments Commission [2013]¹ and 'Z' and Australian Securities and Investments Commission [2013]². In both previous matters, the Information Commissioner gave significant weight to the prejudice that the release of the documents would cause to the protection of the privacy of the individuals concerned. The Information Commissioner also noted that the sensitivity of the financial information included in the letters was a significant factor weighing against disclosure.

Release of the material in full would promote the objects of the FOI Act by making information held by ASIC available to the public. Against this must be weighed a consideration of the public interest in protecting individuals from the unreasonable disclosure of their personal information.

In this instance, the release of this material would certainly have an adverse impact upon the personal privacy of both Mr Shipton and Mr Crennan as well as the third parties whose information also appears in Documents 1-6. Accordingly, I am satisfied that the public interest weighs more heavily in favour of protecting the personal privacy of the affected individuals and that the documents found to be conditionally exempt are exempt from release under section 47F of the FOI Act.

¹ 2013 AICmr 48 (22 April 2013)

² 2013 AICmr 43 (15 April 2013)

Section 22 Access to edited copies

Section 22(2) of the FOI Act requires an agency to provide an applicant access to an edited copy of a document with the exempt matter deleted if it is reasonably practicable for the agency to prepare an edited copy, having regard to:

- the nature and extent of the modifications (s 22(1)(c)(i)); and
- the resources available to modify the document (s 22(1)(c)(ii)).

I consider that it is not reasonably practicable to prepare an edited copy of the documents with the exempt material deleted in this instance.

I further note that additional material has been removed from documents 1-6 as indicated in the attached schedule in accordance with section 22(b)(ii) of the FOI Act which states that a document can be edited to '*not disclose any information that would reasonably be regarded as irrelevant to the request...*'

The material that was deemed irrelevant to your request involved declarations made by Mr Shipton to the Minister under section 29 of the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)* and Rule 13 of the *Public Governance Performance and Accountability Rule 2014*.

As these declarations are clearly differentiated in the identified documents as being made in respect of Mr Shipton's obligations under the PGPA Act, I consider them to fall outside of the scope of your request.

Review rights

I provide you with the following information as required by section 26 of the FOI Act.

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

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.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'J. Frank', is positioned above the printed name.

Justin Frank

Lawyer, FOI & Privacy

(Authorised decision maker under section 23(1) of the FOI Act)

Schedule of Documents

No.	Description of document	Date	No. of Pages	Decision on access A – Access P – Partially exempt E - Exempt	Relevant section of FOI Act
1	Biannual Disclosure J.Shipton	28/03/2018	7	E	22, 47F
2	Biannual Disclosure J.Shipton	29/10/2018	7	E	22, 47F
3	Biannual Disclosure J.Shipton	20/03/2019	7	E	22, 47F
4	Biannual Disclosure J.Shipton	23/08/2019	5	E	22, 47F
5	Biannual Disclosure J.Shipton	10/03/2020	5	E	22, 47F
6	Biannual Disclosure J.Shipton	30/09/2020	5	E	22, 47F
7	Initial Disclosure D.Crennan	08/01/2019	3	E	47F
8	Biannual Disclosure D.Crennan	11/02/2019	3	E	47F
9	Biannual Disclosure D.Crennan	21/08/2019	3	E	47F
10	Biannual Disclosure D.Crennan	14/02/2020	3	E	47F
11	Biannual Disclosure D.Crennan	11/08/2020	3	E	47F