



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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25 November 2020

Phillip Sweeney

By email: foi+request-6837-566d8031@righttoknow.org.au

Dear Mr Sweeney,

Notice of Freedom of Information Decision – Ref 212-2020

I refer to your email received by the Australian Securities and Investments Commission (**ASIC**) on 26 October 2020 in which you seek access to the following under the *Freedom of Information Act 1982* (Cth) (**FOI Act**):

The document I seek is a copy of the correspondence from the Auditor General or the ANAO to James Shipton or ASIC on 22 October 2020.

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 25 November 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. This letter gives notice of my decision.

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.¹

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:

- Searches were conducted by staff in the Chief Legal Office (CLO); and
- Searches were conducted electronically utilising ASIC's SharePoint database, and across ASIC's systems.

I am informed that neither ASIC nor the Chair received any correspondence from the Auditor-General or the ANAO on 22 October 2020.

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.

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

¹ FOI Guidelines [3.89]

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

email: 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

email: 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
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Australian Securities and Investments Commission
Phone: 03 9280 4416
Email: haydar.tuncer@asic.gov.au