



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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Our Reference: FOI-231-2020
24000/20

18 December 2020

Dear Gayle

Internal Review Decision of Freedom of Information Request 231-2020

I refer to your request for internal review of the primary decision made by ASIC on 24 November 2020 about your request for access to documents made under the *Freedom of Information Act 1982 (FOI Act)*.

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

Background

On 10 November 2020 ASIC received your request for documents under the FOI Act. You sought access to the following:

Copies of documents relating to the following complaints lodged with ASIC for the period 01 January 2020 to 10 November 2020:

- 1. The number of all complaints lodged with the Australian Securities and Investment Commission (ASIC) concerning Equifax (Equifax Australia Pty Ltd)*
- 2. The number of all Equifax complaints investigated by ASIC*
- 3. The number of all Equifax complaints lodged with ASIC and investigated by ASIC*
- 4. The number of all complaints lodged with ASIC relating to obtaining the on-line "Get my free Equifax credit report" (formerly known as my credit file). Please note, these complaints may contain information relating the Equifax link hosted on the moneysmart.gov.au website:
<https://moneysmart.gov.au/managing-debt/credit-scores-and-credit-reports> Equifax, and;*
- 5. The number of these complaints investigated by ASIC.*

On 24 November 2020 ASIC made a primary decision in response to your request.

On 24 November 2020 ASIC received your request for an internal review (**review request**) of the primary decision.

Request for the number of complaints and number of complaints investigated

I note that in your FOI request dated 10 November 2020 you request 'the number of all complaints...', 'the number of all Equifax complaints' and 'the number of all complaints investigated' concerning Equifax Australia Pty Ltd within the relevant time period you specified.

The FOI Act promotes government accountability and transparency by providing a legal framework for individuals to request access to documents held by government agencies such as ASIC. The purpose of the FOI Act is not for individuals to pose questions or queries to ASIC and seek confirmation for the existence or non-existence of a complaint or an investigation.

ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator. We work closely with the financial services and credit industry to ensure they comply with the laws we administer. ASIC cannot comment on operational matters or inquiries regarding these matters. These limitations are intended to protect the confidentiality of information reported to ASIC and the integrity of ASIC's investigation and enforcement activities. For further information, please refer to [Information Sheet 152](#) *Public comment on ASIC's regulatory activities* (INFO 152).

Further information about ASIC's law enforcement role and how we select matters for regulatory action is contained in ASIC's [Information Sheet 151](#) *ASIC's approach to enforcement* (INFO 151).

Therefore, for the reasons I have outlined above, I interpreted your request as a request for access to documents relating to all complaints lodged with ASIC concerning Equifax Australia Pty Ltd ACN 609501180 (**Equifax Australia**) between 1 January 2020 and 10 November 2020.

Decision and reasons for decision

I affirm the original decision to neither confirm nor deny the existence of any documents of the type you requested. Such documents, if they existed, would be exempt from release pursuant to subsection 37(1) of the FOI Act.

ASIC refers to complaints about the conduct of companies and individuals as 'reports of misconduct'. Reports of misconduct are integral to ASIC's regulatory function including how we monitor compliance, investigate breaches and enforce the laws we administer. These reports provide intelligence and evidence of breaches of laws that attract criminal, civil and administrative penalties.

Under section 25 of the FOI Act, ASIC is not required to give information about the existence of documents if providing such information could reasonably be expected to reveal the existence or identity of a confidential source of information, or the nonexistence of a confidential source of information, in relation to the enforcement or administration of the law – paragraph 37(1)(b).

ASIC's longstanding public position is that:

- we consider every report of misconduct is given to us in confidence; and
- we will not reveal the identity of the misconduct reporter or the content of their report unless required or authorised to do so under law.

We therefore receive all reports of misconduct on the understanding that the misconduct reporter's identity will remain confidential. The documents you seek if their existence was acknowledged could reasonably be expected to reveal existence or non-existence of a confidential source.

Section 37(1)(b) is intended to protect the identity of a confidential source of information connected with the administration or the enforcement of the law. This 'extends to the work of agencies in administering legislation schemes and requires, monitoring compliance, and investigating breaches.'¹

It is the source, rather than the information, which is confidential.² The exemption applies where the person who supplies that information wishes his or her identity to be known only to those who need to know it for the purpose of enforcing or administering the law and the information was supplied on the understanding, express or implied, that the source's identity would remain confidential.³

Intelligence gathering through reports of alleged misconduct from members of the public is an important part of ASIC's operations. Receiving reports of misconduct from members of the public facilitates ASIC's investigatory functions and it is important that evidence that ASIC collects through reports from informants be as frank as possible.

In this case, it is reasonable to expect that the information in the documents within the scope of your request, if such documents existed, would be of a kind that would contain information, the disclosure of which could reasonably be expected to identify its source or to disclose, or allow a person to ascertain, the existence or non-existence of a confidential source of information.

Material considered

I considered the following material in making my decision:

- your FOI request dated 10 November 2020;

¹ FOI Guidelines [5.82]. See also 'OG' and Australian Securities and Investments Commission [2018] AICmr 31 [32]

² FOI Guidelines [5.91]

³ FOI Guidelines [5.92]

- Ms Byrne's letter concerning the original decision, dated 24 November 2020;
- your request for internal review dated 24 November 2020;
- information held on ASIC's databases;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act;
- the FOI Act, specifically:
 - sections 4, 11, 11A, 11B, 15, 24AA, 24AB, 25, 26, 37
 - Part VI – Internal review of decision
- ASIC [Information Sheet 153](#) *How ASIC deals with reports of misconduct*;
- ASIC [Regulatory Guide 103](#) *Confidentiality and release of information*;
- and
- ASIC [Privacy Policy](#).

Review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. 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 (OAIC) website. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

FOI Complaints

You may complain to the OAIC about the conduct of ASIC in the handling of this request. You may contact the OAIC as described above.

Questions about this decision

If you wish to discuss this decision, please contact me at aya.morton@asic.gov.au.

Yours sincerely



Aya Morton
(Authorised decision-maker under subsection 23(1) of the FOI Act)
for the Australian Securities and Investments Commission