



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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Our Reference: FOI 071-2021

19 May 2021

Dear Mr Sweeney

Freedom of Information Request No. 071-2021
Notice to Identify Documents under Section 24AB of the Act

I refer to your request dated 2 May 2021 under the *Freedom of Information Act 1982 (FOI Act)* in which you seek access to documents in the possession of the Australian Securities and Investments Commission (**ASIC**).

Your request seeks access to the following:

"The Treasury is conducting a Review of the Australian Financial Complaints Authority and the terms of reference include "1.2 Are AFCA's processes for the identification and appropriate response to systemic issues arising from complaints effective"?

Evidence has been provided to David Locke of a systemic issue that relates to a majority of National Australia Bank's Australian Staff who were unlawfully transferred from a top-10 performing "not-for-profit" staff superannuation fund into the poor performing "for-profit" MLC Super Fund.

This transfer was in contravention of the governing rules of the fund and in contravention of superannuation laws.

David Locke has a duty to report this systemic misconduct to ASIC (as well as APRA).

The document (or documents I seek) are copies of any correspondence from David Locke (or AFCA) to ASIC that would confirm that David Locke has complied with his duty to report systemic misconduct to ASIC."

Section 15(2)(b) of the FOI Act

I am writing to advise you that your request does not satisfy the requirement set out in section 15(2)(b) of the FOI Act which states that a request for access to a document must '*provide such information concerning the document as is reasonably necessary to enable a responsible officer of an agency... to identify it*'. As section 15(2)(b) has not been met ASIC may, in accordance with section 24(1)(b) of the Act, refuse to process your application.

In its current form, it would be my intention to refuse access to the documents sought in the request on this practical refusal ground. However, to assist you to make a valid request I make the following comments.

In your request you seek "*any correspondence from David Locke (or AFCA) to ASIC that would confirm that David Locke has complied with his duty to report systemic misconduct to ASIC*". I am unable to identify or characterise a document(s) that may "confirm that David Locke has complied with his duty to report systemic misconduct to ASIC". It does not specifically identify the document(s) you are seeking and is subjective in nature. In its current form, I find it difficult to identify the document(s) you are seeking given the broad and ambiguous nature of your request.

As you are aware, if AFCA considers that there is a systemic issue arising from the consideration of complaints under the AFCA scheme, AFCA must give particulars of the issue to one or more of the regulators, as appropriate under section 1052E(4) of the *Corporations Act 2001*. However, AFCA may identify a possible systemic issue in the course of resolving a complaint that, after investigation, AFCA decides is not systemic and therefore not reportable. Further information about our oversight role of AFCA and reporting of systemic issues can be found in ASIC's [Regulatory Guide 267](#).

Your request also encompasses any correspondence ASIC would have received from AFCA, its employees or Mr David Locke without a specified timeframe.

For the reasons stated above, your request in its current form does not adequately identify the documents sought and it would therefore be my intention to refuse your request given that a practical refusal reason exists within the meaning of section 24AA(1)(b) of the FOI Act.

In revising your request, you may wish to consider the following suggestions for both parts of your request:

- Specifying in detail the type or nature of document you are seeking;
- Specifying a timeframe for the documents.

Request consultation process

The purpose of this letter is to provide you with an opportunity to revise your request so that the practical refusal reason no longer exists before a final decision is made. Should you wish to submit a revised request please take into

consideration the issues raised in this notice to ensure that they are addressed.

Timeframe

The statutory timeframe for notifying an applicant of a decision on a request for access under the FOI Act is 30 days from the day the agency receives the request. Please note that in accordance with section 24AB(8) of the FOI Act, the time for processing your request is suspended from the day that you receive this letter, and resumes on the day after ASIC receives from you one of the following:

- written notification that you wish to withdraw the request;
- a revised written request addressing the matters raised above; or
- written notification that you do not wish to revise your request.

If you choose to do one of the following actions above mentioned, you must do so **within 14 days** of the date of this letter (the **consultation period**). If I have not heard from you by the end of the consultation period, your request will be taken to be withdrawn in accordance with section 24AB(7) of the FOI Act.

Should you wish to provide written notification to withdraw the request this must also be done within the consultation period. A written notification of withdrawal is effective at the time of the withdrawal. Section 24AB(7) provides that a withdrawal is effective at the end of the consultation period if the applicant does not take any action.

During the consultation period you may wish to seek assistance in reframing your request. If you have any questions or wish to discuss, please contact me by email at krystal.fung@asic.gov.au

Yours sincerely,



Krystal Fung
(Authorised decision maker pursuant to subsection 23(1) of the FOI Act)
For the Australian Securities and Investments Commission