



**ASIC**  
Australian Securities &  
Investments Commission

**Australian Securities  
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Phillip Sweeney

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Our Reference: FOI 071-2021

8 June 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 received by this office dated 2 May 2021, seeking access to documents under the *Freedom of Information Act 1982 (FOI Act)* and your revised requested received on 2 June 2021 (**Request 1**) which was in response to my section 24AB noticed dated 19 May 2021.

**Request 1 – dated 2 May 2021 (revised 2 June 2021)**

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

I am writing to advise you that Request 1 still 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 Request 1 on this practical refusal ground. However, to assist you to make a valid request I make the following comments.

Request 1 seeks access to "copies of any correspondence from David Locke (or AFCA) to ASIC dated from 26 March 2021 to the present."

The use of the term 'any correspondence' has the effect of expanding the scope of your request to encompass all and any correspondence received by ASIC from Mr David Locke, AFCA or any its employees during the specified timeframe whether the relevant document is specifically in relation to a

particular entity, matter or individual or merely administrative or trivial. This interpretation renders Request 1 hopelessly broad by capturing all correspondence received by ASIC or any ASIC staff member no matter how trivial the relevant correspondence may be.

For the reasons stated above, the 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.

#### Section 24AA(1)(a) FOI Act

My preliminary assessment is that, subject to clarification of the matters raised above, the scope of Request 1 is extremely broad and identifying documents that are responsive to the current interpretation of your request as revised on 2 June 2021 would substantially and unreasonably divert ASIC's resources from its other operations for the purposes of section 24AA(1)(a) of the FOI Act.

Taken at its broadest interpretation, Request 1 would require us to undertake searches of every ASIC staff members' inboxes, internal databases and workflow systems to locate any correspondence from Mr David Locke, AFCA and any of its employees in relation to any subject matter during the specified timeframe. As you are aware, ASIC has an oversight role of AFCA. As such, it is likely that there are numerous day to day communications between members of ASIC and AFCA staff. To conduct a search across such a large number of individuals would be excessively burdensome and, in my view, would unreasonably interfere with ASIC's day to day activities.

In view of the above, I consider that the work involved in conducting searches to identify the material that is responsive to your request in its current form would substantially and unreasonably divert ASIC's resources from its other operations. Accordingly, I consider that a practical refusal reason exists within the meaning of section 24AA(1)(a)(i) of the FOI Act in relation to your request.

The Office of the Australian Information Commissioner recommends that agencies examine a representative sample of 10-15% of documents to assess the complexity of the material against whether the work involved in processing the request would constitute a substantial and unreasonable diversion of resources from the agency's other operations. In this instance, I consider that the difficulty in conducting searches that are responsive to the terms of your request further prevents us from quantifying the effort required to process your request in its current form.

However, I can further advise that any request that captures information relating to the affairs of any third parties would require extensive consultation with these parties under sections 27 and 27A of the FOI Act and that this consultation is likely to substantially add to the burden of processing your request.

**Request 2 – dated 2 June 2021**

I refer to your request dated 2 June 2021 (**Request 2**) 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**). I note that Request 2 is a duplicate of your original request received on 2 May 2021. As such, I make the same comments I made in the section 24AB notice dated 19 May 2021 (ref: FOI 071-2021).

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

I advise that Request 2 does not satisfy the requirement set out in section 15(2)(b) of the FOI Act.

Request 2 seeks access to “*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.

Your request is extremely broad in nature and encompasses any correspondence ASIC would have received from AFCA, its employees or David Locke without a specified timeframe.

For the reasons stated above, the 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.

You may also wish to consider withdrawing Request 2 as it is a duplicate of your original request received on 2 May 2021.

**Section 24(2) of the FOI Act**

The two FOI requests to which this notice relates are described in the **attached** schedule. The requests seek access to documents that relate to the below

- A. Correspondence from David Locke, AFCA or AFCA employees.

Section 24(2) of the FOI Act states that in deciding whether a practical refusal reason exists, two or more requests may be treated as a single request if the requests relate to the same document or documents, or the subject matter is substantially the same for the requests.

In my view the two FOI requests described in the attached schedule may be treated as a single request because the subject matter of the requests is the same or substantially the same.

I am satisfied that the two requests relate to subject matter of which is substantially the same for all requests. Accordingly, I have, for the purposes of this notice, treated the two requests described in the attached schedule as a single request. As ASIC received the first request on 2 May 2021, ASIC will treat the Request as being received on 2 May 2021.

### **Request consultation process**

The purpose of this letter is to provide you with an opportunity to revise your request so that the practical refusal reasons no longer exist 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 at [krystal.fung@asic.gov.au](mailto: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**

**Schedule of Phillip Sweeney requests 2 May 2021 to 2 June 2021**

<b>Request No.</b>	<b>Date of Request</b>	<b>Documents sought in Request</b>
1.	<b>2 May 2021 (revised 2 June 2021)</b>	<i>"I am seeking copies of any correspondence from David Locke (or AFCA) to ASIC dated from 26 March 2021 to the present."</i>
2.	<b>2 June 2021</b>	<p><i>"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"?"</i></p> <p><i>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.</i></p> <p><i>This transfer was in contravention of the governing rules of the fund and in contravention of superannuation laws.</i></p> <p><i>David Locke has a duty to report this systemic misconduct to ASIC (as well as APRA).</i></p> <p><i>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."</i></p>