



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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Mr Phillip Sweeney

By email: foi+request-7553-96574e36@righttoknow.org.au

Our Reference: 161 - 2021

18 August 2021

Dear Mr Sweeney

Freedom of Information Request - Ref 161-2021

Notice under s 24AB of the FOI Act

I refer to your request received on 16 August 2021 in which you seek access to documents in the possession of the Australian Securities and Investments Commission (**ASIC**) pursuant to the *Freedom of Information Act 1982* (**FOI Act**).

Your request seeks access to the following:

(i) correspondence from the new ASIC Chairman, Joseph Longo, to Wayne Byres, the Chairman of APRA (or to Deputy Chair Helen Rowell).

(ii) copies of any documents provided by APRA to Joseph Longo or ASIC by Wayne Byres or APRA

The search period is from 1 June 2021 until the date APRA responds to this FOI request.

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

Identification of documents: Section 15(2)(b) of the FOI Act

Section 15(2)(b) of the FOI Act 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*'.

I am writing to advise you that the following aspect of your request does not satisfy the requirement set out in s 15(2)(b):

(ii) copies of any documents provided by APRA to Joseph Longo or ASIC by Wayne Byres or APRA

Based on a review of the terms of the request and preliminary inquiries conducted with business areas, it is not possible to identify the documents sought in this aspect of your request because of the ambiguity in the term '*documents provided by APRA to Joseph Longo or ASIC by Wayne Byres or*

APRA', and 'The search period is from 1 June 2021 until the date APRA responds to this FOI request'.

Specifically, it is not clear whether you consider that documents 'provided by APRA to Joseph Longo or ASIC by Wayne Byres or APRA' comprises:

- documents provided by Wayne Byres or APRA to Joseph Longo and documents provided by Wayne Byres or APRA to ASIC; **or**
- documents provided by APRA to Joseph Longo and ASIC; and documents provided by Wayne Byres or APRA to any other unnamed parties.

In addition, the timeframe within which you are seeking documents is unclear as this FOI request was made to ASIC rather than APRA.

Hence, for the purposes of s 15(2)(b) it appears that additional information concerning the documents is 'reasonably necessary' to enable an ASIC officer to identify the documents.

Having regard to the discussion above, it would be of assistance if you would please clarify whether you are seeking:

- documents provided by Wayne Byres or APRA to Joseph Longo
- documents provided by Wayne Byres or APRA to ASIC; and/or
- documents provided by Wayne Byres or APRA to any other parties that are internal or external to APRA.

Noting that the FOI Act only applies to documents that are in existence at the date of the request, it would be of assistance if you would please clarify whether you are seeking documents between 1 June 2021 until the date of the FOI request (16 August 2021).

Practical refusal reason: Section 24AA(1)(b) FOI Act

I am writing to advise you that I believe that for the reasons stated above, your request in its current form does not adequately identify the documents sought. This is called a 'practical refusal reason' (section 24AA(1)(b)).

On this basis, I intend to refuse access to the documents you requested given that a practical refusal reason exists within the meaning of section 24AA(1)(b) of the FOI Act.

However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under section 24AB of the FOI Act.

You have 14 days to respond to this notice in one of the ways set out below.

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.

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request
- make a revised request
- tell us that you do not wish to revise your request.

The consultation period runs for 14 days and starts on the day after you receive this notice.

During this period, you are welcome to seek assistance from me as the contact person listed below to revise your request. If you revise your request in a way that adequately addresses the practical refusal ground outlined above, we will recommence processing it. (Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30-day time limit for processing your request.)

If you do not do one of the three things listed above during the consultation period or you do not consult me as the contact person during this period, your request will be taken to have been withdrawn.

Contact officer

As discussed above, during the consultation period you may contact me if you wish to seek assistance in reframing your request.

If you have any questions about this process, please contact me on 02 9911 5716 or 0466 133 258 or by email at rachel.ranjan@asic.gov.au.

Yours sincerely

Dr Rachel Ranjan

Lawyer - FOI & Privacy, Chief Legal Office

Australian Securities and Investments Commission

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