



Australian Government

AUSTRAC

Reference: PIAT-3933

6 December 2021

Mr Frank Lee

Sent by email to: foi+request-7846-789875c4@righttoknow.org.au

Dear Mr Lee,

Freedom of Information Request Decision

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to your Freedom of Information request (FOI request) that was received on 18 October 2021, in which you sought access to documents under the provisions of the *Freedom of Information Act 1982* (FOI Act), that you understood to be held by AUSTRAC.

Specifically, you have requested the following:

I wish to make an additional Freedom of Information Act request into documents held by AUSTRAC relevant to [InvestbyBit Pty Ltd trading as Binance Australia] so as to obtain documents dated after the date range of the original FOI request. The scope of the original request was as follows:

- (a) written notices to this company regarding the potential of money laundering/terrorist financing or compliance with AML/CTF law*
- (b) infringement notices for breaches of the AML/CTF Act*
- (c) ML/TF financing risk assessments provided to AUSTRAC*
- (d) audit reports provided to AUSTRAC*
- (e) enforcement actions taken against this company*
- (f) registration actions taken against this company*

I am making this request so as to receive documents dated up to the date of this submission.

The company announced that it was making changes to its policies on highly leveraged financial products including futures, options, etc. It made this announcement on 21 September and said this was to better comply with regulatory requirements. As such, I would like to extend the scope of the request to include:

- (g) any correspondence regarding the products this company offers*
- (h) any correspondence regarding the legality of this company's operations*

The documents requested in categories (a) to (f) are identical to those which you requested in your previous request which AUSTRAC received on 9 September 2021 (our reference PIAT-3892). I note that a decision in relation to PIAT-3892 was handed down on 21 October 2021. In summary, there were no documents found with respect to categories (b), (d), (e) or (f). To the extent that six documents were found responsive to categories (a) and (c), I made the decision to exempt two documents in full and four documents in part on the basis of s 47G or s 22 of the FOI Act.

Pursuant to this latest FOI request from you, a search for the documents in categories (a) to (f) was conducted again, with the date range expanded from 9 September 2021 to the date of this request, 18 October 2021. No additional documents responsive to categories (a) to (f) were found.

In respect of categories (g) and (h), given the specific context in which documents within scope of (g) and (h) are requested, i.e. the announcement InvestbyBit Pty Ltd/ Binance Australia (hereafter referred to as “**the third party**”) made on 21 September 2021 that it would cease to offer highly leveraged financial products such as crypto futures and options, I have interpreted that part of your request as seeking correspondence between AUSTRAC and the third party regarding such financial products, and any correspondence regarding the legality of the third party’s operations with respect to such financial products.

Searches conducted by AUSTRAC have identified 22 email correspondence consisting of email trails that largely duplicate in content, that potentially fall within scope of categories (g) and (h). As the content of the email correspondence involves information I considered the third party would likely wish to make exemption contentions for, pursuant to s 27 of the FOI Act the third party was notified of the FOI request and invited to comment on the possible disclosure of the email correspondence.

A response from the third party was received on 19 November 2021. After considering the response, I have decided that properly construed, the 22 email correspondence found are in fact not within scope of categories (g) and (h) of this FOI request.

As no additional documents have been found within scope of categories (a) and (f) within the expanded date range of 9 September 2021 to 18 October 2021, and as no documents properly falling within the scope of categories (g) and (h) have been found, I have decided to refuse access under s 24A(1)(b)(ii) of the FOI Act.

Section 26 of the FOI Act requires AUSTRAC to provide a statement of reasons in support of a decision. My reason for this decision is set out in **Attachment A**.

The FOI Act provides a number of avenues for review if you are dissatisfied with any aspect of this decision. Your review rights are set out in **Attachment B**.

If you have any questions or require further information, please contact me via email at info_access@austrac.gov.au

Yours sincerely



Jennifer Ermert
Authorised Decision Maker
AUSTRAC

Enclosures

Attachment A – Statement of Reasons

Attachment B – Review Rights

Statement of Reasons

I, Jennifer Ermert, am an officer authorised under s 23 of the FOI Act to make a decision in relation to your request. The following is my decision and the reasons for that decision.

Overview

In this FOI request, you sought documents identical to that which you requested in PIAT-3892 but with an expanded date range from 9 September 2021 to the date of this request, being 18 October 2021. Two searches conducted by two independent AUSTRAC staff members did not identify any documents in addition to those found pursuant to the request in PIAT-3892.

You also sought correspondence regarding certain products offered by InvestbyBit Pty Ltd/ Binance Australia (hereafter referred to as “**the third party**”), and correspondence regarding the legality of the third party’s operations. The correspondence are being sought in the context of an announcement that you say the third party made on 21 September 2021 to cease offering highly leveraged financial products such as crypto futures and options¹.

Given this specific context against which you seek the correspondence, I have interpreted this part of your request as seeking correspondence between AUSTRAC and the third party regarding such financial products, and any correspondence regarding the legality of the third party’s operations with respect to such financial products. Searches conducted based on this interpretation identified 22 email correspondence, consisting of email trails that largely duplicate in content, that are potentially within scope.

Section 27 of the FOI Act, in brief, provides that where a request is made to an agency (such as AUSTRAC) for documents containing the business information of a person, organisation or undertaking which the agency believes the person, organisation or proprietor of the undertaking might reasonably wish to make an exemption contention for on the basis that the documents are either exempt under s 47, or conditionally exempt under s 47G and the disclosure is, on balance, contrary to the public interest, access to the documents must not

¹ [Changes to Binance offerings in Australia | Binance Support](#)

be given without providing the person, organisation or proprietor of the undertaking an opportunity to make submissions first.

In this instance, because the email correspondence found to be potentially within scope include information which I considered the third party might likely wish to make exemption contentions for, the third party was invited to comment on the possible disclosure of the email correspondence, pursuant to s 27.

The third party's exemption contentions

The FOI request is miscast

A response from the third party was received on 19 November 2021 objecting to the disclosure of the email correspondence. A central pillar of the third party's objection is that the FOI request is miscast because it is premised on a factually incorrect assertion that the third party made the 21 September 2021 announcement to cease offering crypto futures and options in Australia. The third party contends that it did not make the announcement because it does not offer the products in question; it only offers spot conversion of fiat to digital currency and vice versa. The announcement was in fact made by Binance, which is a separate legal entity domiciled overseas. Therefore, to the extent that the identified email correspondence purport to respond to the FOI request, the third party submits that a proper reading of the scope of the FOI request should lead instead to the conclusion that there are actually no documents responsive to the request.

Section 47G conditional exemption

Alternatively, the third party contends that in the event AUSTRAC does not agree that your FOI request is miscast, then the conditional exemption in s 47G(1)(a) ought to be applied.

Section 47G(1)(a) of the FOI Act provides:

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
 - (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs;

The third party contends that whilst the email correspondence relate to the overseas entity Binance rather than itself, nonetheless disclosure of the email correspondence would, or could reasonably be expected to, unreasonably affect the third party's lawful business, commercial or financial affairs. That is, because the email correspondence variously relate to a customer complaint to Binance's support email address or a media inquiry into allegations that recurring systems outages at Binance have left some customers unable to take actions to protect their assets during periods of high market volatility, disclosing the email correspondence would, or could reasonably be expect to, unfairly and incorrectly associate the third party with products it does not provide and cause negative inferences to be drawn about the third party and its operations.

Finally, the third party submits that any proposed disclosure of the email correspondence, which it says are subject to the s 47G(1)(a) conditional exemption, would be contrary to the public interest because the factors favouring access to the documents have not be made out: it would not promote the objects of the FOI Act, nor would it promote the effective oversight of public expenditure or inform debate on matter of public importance.

Consideration of the exemption contentions

No documents exist

I have considered the third party's exemption contentions and carefully reviewed all the material available to me, including the exact wording of the FOI request, the 21 September 2021 announcement (linked in footnote 1), the content of the email correspondence, and information available internally within AUSTRAC confirming that the third party is a legal entity separate to Binance and offers only exchange of fiat for digital currency and vice versa. I accept the third party's contention that the FOI request has been miscast based on a mistaken assumption that the third party offered crypto futures and options and made the product cessation announcement, when neither of those assumptions is true.

Therefore, to the extent that the FOI request seeks access to correspondence concerning the third party's offering of these products and the legality of the third party's operations with respect to these products, I find that the email correspondence identified and which I initially assessed to be potentially within scope, are in fact out of scope.

Subsection 24A(1)(b)(ii) of the FOI Act provides that a request may be refused if documents cannot be found or do not exist. Given there are no documents found that are responsive to the properly construed scope of the FOI request, I am satisfied it is appropriate to refuse access under s 24A(1)(b)(ii) of the FOI Act.

Conditional exemption and public interest

As I have found that there are no documents in scope, it is unnecessary for me to deal with the third party's alternative exemption contention based on s 47G(1)(a). Nonetheless, I will address the alternative exemption condition for completeness, in anticipation that you may assert (or submit another FOI request) that given the benefit of the preceding discussion, what you really meant to ask for is access to correspondence about the crypto futures and options subject of the 21 September 2021 announcement, and correspondence about the legality of the operation of whichever entity that offered these products.

I accept the third party's exemption contention relying on s 47G(1)(a) and find that if the identified email correspondence were to be disclosed pursuant to a revised scope or new FOI request, the disclosure would, or could reasonably be expected to, adversely affect the third party's lawful business, commercial or financial affairs. Given the ease with which the third party is confused with Binance despite the two being separate legal entities, as demonstrated by the way this FOI request has been miscast as well as the way I have incorrectly assessed the relevance of the email correspondence identified, it is not difficult to understand why the third party would be concerned about potential prejudice of the disclosure to its business by causing the third party to be incorrectly associated with customer complaints etc. directed to the other entity and being tarnished by inference.

Where documents are found to be conditionally exempt – which I have found the email correspondence in question to be – s 11A(5) of the FOI Act provides that the documents must be disclosed unless circumstances suggest that disclosure of the documents would be, on balance, contrary to public interest. Having regard to the factors specified in s 11B(3) of the FOI Act for determining whether or not disclosure of conditionally exempt documents would, on balance, be contrary to the public interest, I find that whilst disclosing the email correspondence would tend to promote the objects of the FOI Act, the third party's arguments that disclosure would not inform debate on matters of public importance nor promote effective oversight of public expenditure are compelling.

In reaching a conclusion that public interest does not weigh in favour of disclosing the email correspondence, I also had regard to the irrelevant factors which s 11B(4) provides must not be taken into account in assessing public interest, in particular, that access to the document could result in any person misinterpreting or misunderstanding the document. For avoidance of doubt, the potential risk of the content of the email correspondence being misinterpreted or misunderstood as being related or attributable to the third party is not a factor I took into account for the purpose of weighing public interest. Rather – and I reiterate – it was a factor that I considered relevant and took into account for the purpose of assessing the applicability of the s 47G conditional exemption.

Evidence/Material on which my findings were based

In reaching my decision to refuse access to the documents requested, I relied on the following documentary evidence:

- *Freedom of Information Act 1982*;
- Guidelines issued by the Australian Information Commissioner;
- the scope of the FOI request received by AUSTRAC from you on 18 October 2021;
- documents found to be potentially relevant, but ultimately determined not to be within scope;
- AUSTRAC information confirming the third party's status as a separate legal entity to Binance; and
- the third party's submissions outlining its exemption contentions in response to consultation letter issued under s 27 of the FOI Act.

Review Rights

The following review rights apply.

Section 54 of the FOI Act gives you the right to apply for an internal review of the decision refusing to grant access to documents. An application for a review of the decision must be made in writing within 30 days of receipt of this letter. No particular form is required; however, it would assist the decision maker if the application grounds on which it is considered that the decision should be reviewed were set out.

Under s 53A of the FOI Act you may have ground for review under s 54 if you can establish that there are other documents held by AUSTRAC which have not been released.

Applications for review of the decision should be addressed to info_access@austrac.gov.au or via mail to:

Australian Transaction Reports and Analysis Centre
Freedom of Information
PO BOX 5516
WEST CHATSWOOD NSW 1515

It is preferred you seek internal review before seeking review of the decision by the Australian Information Commissioner.

Office of the Australian Information Commissioner

One of the three primary functions of the Office of the Australian Information Commissioner is the oversight of the Freedom of Information Act 1982 and review of decisions made by agencies and ministers under that Act. If you are dissatisfied with the result of an FOI request, you may seek an Information Commissioner (IC) review.

IC review applications can be made to enquiries@oaic.gov.au or via mail to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

For further information about IC reviews please refer to the OAIC website.

Administrative Appeals Tribunal

An application may be made to the Administrative Appeals Tribunal (AAT) after the OAIC has made a decision. The AAT may also review a decision by the OAIC not to undertake a review. An application must be submitted to the AAT within 28 days of being notified of the decision by the OAIC. The AAT can be contacted on 1300 366 700.

Complaints

If you are not satisfied with the way AUSTRAC has processed your Freedom of Information request, you can complain to the OAIC. A complaint must be made in writing and must identify AUSTRAC as the agency that made the decision. There is no particular form required to make a request, however, the complaint should set out the grounds on which it is considered the action taken in relation to the FOI request should be investigated. Complaints can be made to the OAIC at the address listed above.

For up to date information please visit the OAIC website at <https://www.oaic.gov.au>