



Australian Government

AUSTRAC

Reference: PIAT-4097

6 January 2022

Akintunde Jimoh Oyetunde

Sent by email to: foi+request-8166-4bae1f24@righttoknow.org.au

Dear Akintunde Jimoh Oyetunde

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 7 December 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.

The documents you requested are:

"I write to request for Contact Number and/or email address of InvestbyBit Pty Ltd (ABN 98 621 652 579).

I relied on the fact that this entity is regulated by AUSTRAC and it has become imperative to contact them concerning an issue I have with dealings with them."

I examined the scope of your request and have decided to exempt, in full, documents relating to InvestbyBit Pty Ltd. The exemption is based upon section 47G(1) 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 the decision maker via email info_access@austrac.gov.au

Yours sincerely



Ashley Smith
Authorised Decision Maker
AUSTRAC

Enclosures

Attachment A – Statement of Reasons

Attachment B – Review Rights

Statement of Reasons

I, Ashley Smith, 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

The documents sought by you in this request raise in my mind the question of whether an exemption exists in relation to the unreasonable disclosure of business information contained in the documents sought, in particular, information relating to InvestbyBit Pty Ltd (the third party).

In matters where unreasonable disclosure of business information is an issue, there is a two-step process that I am required by the FOI Act to follow in determining whether to release the documents requested. That process comprises:

- Firstly, determining whether the documents requested are conditionally exempt under s 47G of the FOI Act; and
- Secondly, determining whether giving access to the documents would be contrary to the public interest for the purposes of s 11A(5) of the FOI Act.

Step One: Conditional Exemption under s 47G(1)

I am required to consider whether the release of the third party's contact details would be unreasonable.

The FOI Act sets out the following:

Section 47G - Public interest conditional exemptions--business

(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; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

(2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.

(3) Subsection (1) does not have effect in relation to a request by a person for access to a document:

(a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by:

(a) the Commonwealth or a State; or

(b) an authority of the Commonwealth or of a State; or

(c) a Norfolk Island authority; or

(d) a local government authority.

(5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

Consideration of Section 47G

Section 47G(1)(a)

I note in relation to the information under consideration the following facts:

- The information relates to the third party, which is an “organisation” pursuant to the legislation;

This brings the information into consideration under s 47G of the FOI Act. The question, therefore, for consideration is whether disclosure of the information “*would, or could reasonably be expected to, unreasonably affect [...] that organisation or undertaking in respect of its lawful business, commercial or financial affairs*”.

AUSTRAC holds high value on information received by third parties who provide certain information to AUSTRAC to fulfill their reporting entity obligations. This includes information of the kind sought. With that in mind, AUSTRAC is reasonably expected to protect the information it holds, including the information sought.

Although consent is not a prerequisite for release of government held information captured within a FOI request, consent holds considerable weight in determining the reasonableness of releasing third party information not directly relating to you.

The evidence before me does not indicate a relationship exists between yourself and the third party that would persuade me release of particular contact details would be reasonable despite the lack of consent. I am satisfied that to reveal any detail concerning particular contact details provided directly to AUSTRAC in confidence, would be an unreasonable disclosure of third party business information in the circumstances.

Despite these factors, AUSTRAC have gone to some length to assist your desire to contact the Third Party. AUSTRAC invested time and effort on your behalf to identify potential contact details of the third party that may be of assistance to you.

Our research of the company revealed a range of information we happily provided you to assist your endeavors to contact the third party. AUSTRAC provided you the results of an ABN search, as well as the fact we determined Investbit trades as Binance. AUSTRAC identified Binance's website for you and provided a direct weblink which identified a range of contact details. All of this information was provided to you in our email dated 16 December 2021 in the hope AUSTRAC's efforts was of some assistance for you as a member of the community.

I'm satisfied that the third party has an identified and appropriate channel of communication open to the public which could reasonably be utilised. This leads me to be of the view that in light of the fact the third party has a designated channel of communication, any release of the third party's details provided directly to AUSTRAC in confidence would not be appropriate in the circumstances.

Section 47G conclusion

For the reasons set out above, I have decided that the documents sought are conditionally exempt under s 47G(1) of the FOI Act.

Step two: whether giving access to the documents would be contrary to the public interest

Having determined above that the documents sought contain information concerning a business, and that the documents are conditionally exempt under s 47G of the FOI Act, I am required to determine under s 11A(5) of the FOI Act whether access to the document would, on balance, be contrary to the public interest.

The FOI Act sets out the following in relation to release of documents.

Section 11A – Access to documents on request

Scope

(1) This section applies if:

(a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:

- (i) a document of the agency; or
- (ii) an official document of the Minister; and

(b) any charge that, under the regulations, is required to be paid before access is given has been paid.

(2) This section applies subject to this Act

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access – general rule

(3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

(4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects – information or documents otherwise accessible)).

(5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document

(6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:

(a) a conditionally exempt document; and

(b) an exempt document:

- (i) under Division 2 of Part IV (exemptions); or
- (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

Section 11B of the FOI Act sets out factors that are relevant to the determination of whether access to the document would, on balance, be contrary to the public interest for the purposes of s 11A(5) of the FOI Act. It sets out as follows.

Section 11B – Public interest exemption – factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).*
- (2) This section does not limit subsection 11A(5).*

Factors favouring access

- (3) Factors favouring access to the documents in the public include whether access to the document would do any of the following:*
 - (a) promote the objects of the Act (including all the matters set out in sections 3 and 3A);*
 - (b) inform debate on a matter of public importance;*
 - (c) promote effective oversight of public expenditure;*
 - (d) allow a person to access his or her own personal information.*

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:*
 - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;*
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;*
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;*
 - (d) access to the document could result in confusion or unnecessary debate.*

Guidelines

In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

In relation to the matters the FOI Act sets out as favouring access (set out above), I note the following:

- The release of the document is nominally in line with the objects of the FOI Act set out in s 3. That is, the documents do constitute information held by the Government. However, the information has nothing to do with government decision making and therefore has no capacity to advance public participation in government processes, or otherwise subject the Government to increased scrutiny.
- The document in question is not likely to inform public debate, therefore this consideration is not applicable.
- The document in question does not relate to public expenditure, therefore this consideration is not applicable.
- Access to the third party information would not provide the applicant with access to their own personal information.

I also note the following factors that do not favour access:

- Disclosure could reasonably be expected to prejudice the third party's ongoing business affairs in respect to community contact, as set out in the consideration of s 47G. I have discussed this at length above.
- The evidence before me does not indicate that there is a relationship between you and the third party such that they would contemplate or approve of me giving you their personal information.
- Disclosure of the information is reasonably capable of having serious consequences for the third party, including alterations and changes to the contact details provided directly to AUSTRAC for the purposes of direct contact, rather than community contact.

Weighing up the competing interests

After weighing up all the relevant factors, I consider that access to the document would be contrary to the public interest. I consider that the factors in favour of the disclosure, i.e. that the release is nominally in line with the objects of the FOI Act, are not strong enough to support a release. I consider that considerably more weight should be applied to the factors against the release of the requested documents.

Decision

I have decided that the information requested is conditionally exempt under s 47G(1) of the FOI Act and that disclosing that information would be contrary to the public interest for the purposes of s 11A(5) of the FOI Act. As such I do not propose to release the requested information. I note that as I do not propose to release the requested information, I am not required to consult the third party for the purposes of s 27(4) of the FOI Act.

Evidence/Material on which my findings are based

In reaching my decision to release or exempt the documents in full or in part, I relied on the following documentary evidence:

- *Freedom of Information Act 1982*;
- Guidelines issued by the Australian Information Commissioner;
- the scope of the request received by AUSTRAC from you on 7 December 2021;
- our email correspondence dated 16 December 2021.

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>