

Our Reference: 1164/15



ASIC

Australian Securities & Investments Commission

11 February 2015

Mr Culley Palmer

By email: foi+request-864-3bb5118a@righttoknow.org.au

Level 7, 120 Collins Street,
Melbourne VIC 3000
GPO Box 9827, Melbourne VIC 3001
DX 423 Melbourne

Telephone: +61 3 9280 3200

Facsimile: +61 3 9280 3444

www.asic.gov.au

Dear Mr Palmer

Request under the *Freedom of Information Act 1982* for access to documents

Thank you for your request for access under the *Freedom of Information Act 1982* (FOI Act) to documents concerning Metgasco Limited (ACN 088 196 383) (ASX: MEL) (Metgasco).

I am an authorised decision-maker for the purposes of section 23 of the FOI Act.

Your request

You seek access to the following:

- a. Copies of any communications between ASIC and any other Government Departments, Agencies or individuals mentioning or concerning Metgasco's activities in PEL 16; and
- b. Copies of all briefings, communications, forms, reports or notes mentioning Metgasco's activities in PEL 16.

As set out in the acknowledgment letter, I have interpreted your request to be about the New South Wales Government's suspension of Metgasco's activity approval under PEL 16 and therefore searched for documents created after 14 May 2014.

Searches

Identified documents

I have identified two documents that come within the terms of your request.

These documents are both internal ASIC briefing notes and are listed in **Schedule A**.

Non-identified documents

In relation to other documents that *may* be within ASIC's possession within the scope of your request, I make the following comments.

As you may know, part of ASIC's role as the regulator of companies and financial markets includes receiving reports of alleged misconduct. We acknowledge that the terms of your request *may* include reports of alleged misconduct lodged with ASIC about Metgasco's activities with respect to PEL 16.

11 February 2015

ASIC assesses all reports of alleged misconduct that we receive to determine whether the concerns raised suggest breaches of the laws we administer, and whether we have sufficient grounds to take further action in response to any alleged breaches. Reports of misconduct provide ASIC with important intelligence information, and assist us with our administration of the laws we are responsible for enforcing. They do this by identifying targets for future investigations, regulatory action, or law enforcement action.

ASIC accepts reports of misconduct on the assurance of confidentiality for misconduct reporters and other sources. We generally do not disclose whether we have received reports of misconduct about particular matters or from particular parties. ASIC's governing statute, the *Australian Securities and Investments Commission Act 2001*, as well as other administrative laws and operating policies, oblige ASIC to keep these reports confidential and not to disclose them, unless by lawful compulsion, such as through a subpoena in a Court action or in accordance with the FOI Act.

Subsection 37(1) of the FOI Act provides an exemption from release for documents whose release would, or could reasonably be expected to, prejudice the enforcement or proper administration of the law, or disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law. Section 25 of the FOI Act operates to allow ASIC to neither confirm nor deny whether there are documents within our possession that, if they were, would be exempt under subsection 37(1) of FOI Act. For this reason, I have invoked these provisions to neither confirm nor deny whether we have in our possession documents related to reports of misconduct or other documents with this nature within the terms of your request.

Decision

I advise that I have decided that the two documents identified in **Schedule A** fall within a conditional exemption from release set out in the FOI Act, and I have decided not to release these documents.

In brief, I find that documents 1 and 2 are exempt from release because their release would have a substantial adverse effect on the proper and efficient operations of ASIC, and in the circumstances, releasing these documents would be contrary to the public interest. This exemption is set out in paragraph 47E(d) of the FOI Act.

Paragraph 47E(d) provides that a document is conditionally exempt if its disclosure under the FOI Act would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

These documents contain details of the information held by ASIC about Metgasco in relation to its activities, including activities with respect to PEL 16. The information contained in these briefs includes background information, confidential information, intelligence information, and details of ASIC's consideration of this information.

11 February 2015

These briefs were prepared to collate and record this information and to advise ASIC staff about these matters.

ASIC discloses that we gather and assess information and intelligence about the operations of companies registered with us, and it would be expected that internal documents collating this information, including intelligence information, could exist; however the extent of that information, intelligence, how it is gathered, and the outcomes of ASIC's internal assessment processes are not widely known. I find that the release of these documents containing this information would prejudice the effectiveness of ASIC's methods and procedures with respect to our performance of our regulatory functions. This is because the release of these documents containing these details would lessen the effectiveness of these methods and procedures and allow people to organise their affairs so as to avoid detection or ASIC consideration.

This exemption is subject to the public interest test.

Public interest test

The FOI Act provides that access must be given to a conditionally exempt document unless in the circumstances access would on balance be contrary to the public interest.

As required by section 11A of the FOI Act I have considered whether the release of conditionally exempt documents would, on balance, be contrary to the public interest.

In particular, I have considered the following factors outlined in subsection 11B(3) as being factors favouring access to the document in the public interest:

1. Access to the documents would promote the objects of the FOI Act (including all matters set out in sections 3 and 3A).

I have considered the matters outlined in sections 3 and 3A which state that the FOI Act promotes disclosure of documents held by the Government of the Commonwealth.

2. Access to the documents would inform debate on a matter of public importance.

I acknowledge that documents containing information about the operations of public companies listed on the Australian Securities Exchange (ASX) may be of interest to the public. I also acknowledge that our market regulatory framework requires companies themselves to disclose information to the ASX about their operations, under the continuous disclosure regime. I do not consider that the content of these particular documents would inform debate because the disclosure would give an incomplete view of a matter.

In addition, release of confidential or intelligence information about a listed company that is not publicly known, nor required to be publicly known under the continuous disclosure or market regulatory regime, may inappropriately and unfairly affect trading

11 February 2015

in the company's securities. This would lessen the fairness of the market, which would be contrary to the public interest.

3. Access to the documents would promote effective oversight of public expenditure.

I do not find that disclosure of the documents would promote effective oversight of public expenditure.

4. Access to the documents would allow a person to access his or her personal information

The release of the documents would not allow you to access your own personal information.

I find that, on balance, disclosure of the conditionally exempt documents would be contrary to the public interest. The public benefit that lies in disclosure is outweighed by the adverse effects on ASIC's operational activities and regulatory responsibilities. Those adverse effects include prejudice to ASIC's ability to obtain similar information in the future.

I find, therefore, that these documents are exempt from release under paragraph 47E(d) of the FOI Act.

Section 22

Section 22 of the FOI Act provides that:

- where an agency decides not to grant access to a document on the ground that it is an exempt document; and
- it is possible for the agency to make a copy of the document with such deletions that the copy would not be an exempt document; and
- it is reasonably practicable for the agency, having regard to the nature and extent of the work involved in deciding on and making those deletions and resources available for that work, to make such a copy:

the agency shall, unless it is apparent from the request or as a result of consultation by the agency with the applicant that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.

I have considered whether, under section 22 of the FOI Act, it is possible to release the exempt documents with deletions so that the documents would no longer be exempt. I have attempted to edit the documents and I am of the view that such deletions would be so extensive that the exempt documents would be misleading and unintelligible. I am therefore satisfied that it is not practical to edit the briefs for part release.

11 February 2015

Documents that are publicly available

In addition to documents 1 and 2, searches of ASIC's databases revealed a number of documents that potentially fall within the scope of your request. These documents can be purchased from ASIC's website at www.connectonline.asic.gov.au. Documents that the public can purchase from an agency are not subject to the FOI Act.

While we are not releasing them as part of this request, many of these documents are available from either the Metgasco and/or the ASX's website. These documents are set out in **Schedule B** to this letter.

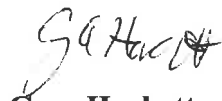
Review Rights

I provide you with the following information as required by section 26 of the FOI Act.

If you are dissatisfied with the decision:

1. You may, within 30 days after the day on which you have been notified of this decision, apply in writing to ASIC for a review of my decision by another ASIC officer under section 54B of the FOI Act. This request should be addressed to me or to the Senior Manager, Administrative Law GPO Box 9827 SYDNEY or by email to foirequest@asic.gov.au.
2. You may apply in writing to the Australian Information Commissioner for a review of my decision under section 54N of the FOI Act. Correspondence should be addressed to the Office of the Australian Information Commissioner at GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001.
3. You may lodge a complaint with the Commonwealth Ombudsman in respect of the conduct of ASIC in the handling of this request. Correspondence should be addressed to the Office of the Australian Information Commissioner – GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001.

Yours sincerely



Greg Hackett

(Authorised Decision-maker under subsection 23(1) of the FOI Act)

For the Australian Securities and Investments Commission

11 February 2015

Schedule A

No	Description of document	Date	Pages	Decision on access	Relevant section
1	ASIC internal brief	23/05/2014	3	Exempt	47E(d)
2	ASIC internal brief		1	Exempt	47E(d)

11 February 2015

Schedule B

ASIC Doc ID	Description of document	Date
5E3709331	Quarterly Activities Report – December 31 2014 Quarter	30/01/2015
5E3536137	ASX Media Release – drilling approval suspended	15/05/2014
5E3536909	ASX Media Release – Metgasco response to PEL16 suspension	16/05/2014
5E353 7214	ASX Media Release – PEL16 Rosella well status	16/05/2014
5E3538314	ASX Media Release – Metgasco submission to Office of Coal Seam Gas	20/05/2014
5E3540060	ASX Media Release – Chairman’s Letter	22/05/2014
5E3544111	ASX Media Release – drilling suspension update	29/05/2014
5E3546248	ASX Media Release – Metgasco initiates legal action	03/06/2014
5E3552054	ASX Media Release – NSW Government agrees to date for suspension review	16/06/2014
5E3556664	ASX Media Release – judicial review update	23/06/2014
5E3579889	Quarterly Activities Report – quarter ended 30 June 2014	
5E3559506	ASX Media Release – Metgasco reviewing new suspension decision	26/06/2014
5E3560243	ASX Media Release – next Supreme Court hearing	27/06/2014
5E3564312	ASX Media Release – Metgasco to proceed with legal action	04/07/2014
5E3565412	ASX Media Release – Chairman’s letter	07/07/2014
5E3574504	ASX Media Release – Update: court action to lift suspension of drilling approval	23/07/2014
5E3589192	ASX media Release – NSW Government decided not to provide evidence	14/08/2014
5E3600114	ASX Media Release – drilling suspension action	25/08/2014
5E3607744	ASX Media Release – drilling suspension: court dates set	28/08/2014
5E3618306	Metgasco: <i>Rosella: Lessons Learnt</i> . Good Oil Conference.	09/2014
5E3625594	ASX Media Release – asset update	19/09/2014
5E3631671	Annual Financial Report, year ended 30 June 2014	
5E3650866	ASX Media Release - Supreme Court Action Update	22/10/2014
5E3658612	ASX Media Release – Quarterly Activities Report, quarter ended 30 September 2014	31/10/2014
5E3653782	Metgasco 2014 Annual Report	
5E3675991	Chairman’s address, Metgasco AGM 2014	28/11/2014
5E3675993	Chairman’s presentation, Metgasco AGM 2014	28/11/2014
5E3676010	Chairman’s address, Metgasco AGM 2014	28/11/2014
5E3676015	Managing address, Metgasco AGM	28/11/2014
5E3690624	Announcement – Merger with Elk Petroleum	