

# Divider Tab No. 11



**Request under the Freedom of Information Act (Treat as In Confidence)**  
**[DLM=Sensitive]**

Guy Di Carlo to: [REDACTED]  
Cc: Greg Kirk

24/12/2012 02:37 PM

Dear [REDACTED]

I refer to your request under the *Freedom of Information Act 1982* (the FOI Act), which was received by the Australian Securities and Investments Commission (ASIC) by email on 17 December 2012. The documents and information which you request are set out in an attachment to that email (the Attachment).

**Paragraph 1 of the Attachment**

Paragraph 1 of the Attachment requests correspondence between ASIC and a number of other entities "in regards to the payday lending industry". I am uncertain as to whether you are requesting:

1. correspondence which relates to "the payday lending industry" only in a general way;
2. correspondence which specifically relates to any "payday lender";
3. both of the classes of correspondence described above; or
4. any other class of correspondence.

Could you please advise which classes of correspondence you are requesting. In addition, please advise whether your request is for correspondence sent or received at any point in time or within a particular period of time. If your request is for correspondence sent or received within a particular period of time, please advise when that period begins and ends.

Once you have advised me of these matters, I will consider whether, among other things, a practical refusal reason under section 24AA of the FOI Act exists in relation to your request on the basis that your request would substantially and unreasonably divert the resources of ASIC from its other operations.

**Paragraph 3 of the Attachment**

Paragraph 3 of the Attachment requests internal policy documents and directions regarding payday lending. Could you please advise whether your request is for internal policy documents and directions at any point in time or within a particular period of time. If your request is for internal policy documents and directions within a particular period of time, please advise when that period begins and ends.

**Paragraphs 2, 4, 5, 6, 7 and 8 of the Attachment**

Paragraphs 2, 4, 5, 6 and 7 of the Attachment request "the number of" times certain events have occurred. Paragraph 8 of the Attachment requests "selection criteria" on which certain decisions are made. In my view, paragraphs 2, 4, 5, 6, 7 and 8 request information rather than documents.

I refer you to paragraphs 3.7 - 3.8 of the Information Commissioner's guidelines issued under section 93A of the FOI Act, which explain that an applicant's right of access under the FOI Act is to existing documents, rather than information, and that the FOI Act does not require an agency to create a new document in response to a request. Those paragraphs of the Information Commissioner's guidelines are available on [http://www.oaic.gov.au/publications/guidelines/Part3\\_processing\\_requests\\_for\\_access.html](http://www.oaic.gov.au/publications/guidelines/Part3_processing_requests_for_access.html).

**Request for an extension of time**

Section 15(5)(b) of the FOI Act provides that an agency must, not later than the end of the period of 30 days after the day on which a request is received, take all reasonable steps to enable an applicant to be notified of a decision on the request. Your request was received by ASIC on 17 December 2012. Therefore, ASIC is required to notify you of a decision on your request by 16 January 2013.

Section 15AA of the FOI Act provides that an agency may extend the period for dealing with a request, by a further period of no more than 30 days, if an applicant agrees in writing to the extension. ASIC is closed from 25 December 2012 to 1 January 2013. In addition, I am on leave from 25 December 2012 to 10 January 2013. In the circumstances, I request your agreement to an extension of time to 15 February 2013 to deal with your request, which is a further period of 30 days. Please urgently advise by email to me and Greg Kirk, who is also a recipient of this email, whether you agree to the extension.

If you have any queries in relation to your request, please contact me by email to [guy.dicarlo@asic.gov.au](mailto:guy.dicarlo@asic.gov.au) or by telephone on the number below.

Yours sincerely,

**Guy Di Carlo** | Lawyer | Deposit Takers, Credit & Insurers | **ASIC** | Sydney | **T** +61 2 9911 5161 | **F** +61 2 9911 2414

# Divider Tab No. 12



RE: Request under the Freedom of Information Act (Treat as In Confidence) [DLM=Sensitive]

to: 'Guy Di Carlo'

24/12/2012 03:30 PM

Please respond to legal

...

This email message has been processed by MIMESweeper

...

Dear Mr Di Carlo,

In response to your requests:

**Paragraph 1:** Correspondence which relates to the payday lending industry only in a general way, between 1 January, 2010 and the date of my request. For the sake of clarification, correspondence which was generally released publicly (ie not specifically addressed to any of the listed parties) is not included in the request.

**Paragraph 3:** Internal policy documents and directions current as at the date of my request.

**Paragraphs 2, 4, 5, 6 and 7:** Please read as requests for all documents created since 1 July, 2010 which record the information set out in the relevant paragraphs.

**Paragraph 8:** Please read as a request for all current documents setting out policy and direction upon which such decisions are made.

I agree to your request for an extension of time to 15 February, 2013.

Kind regards,

**From:** Guy Di Carlo [mailto:Guy.DiCarlo@asic.gov.au]

**Sent:** Monday, 24 December 2012 1:37 PM

**To:**

**Cc:** Greg Kirk

**Subject:** Request under the Freedom of Information Act (Treat as In Confidence) [DLM=Sensitive]

Dear

I refer to your request under the *Freedom of Information Act 1982* (the FOI Act), which was received by the Australian Securities and Investments Commission (ASIC) by email on 17 December 2012. The documents and information which you request are set out in an attachment to that email (the Attachment).

#### Paragraph 1 of the Attachment

Paragraph 1 of the Attachment requests correspondence between ASIC and a number of other entities "in regards to the payday lending industry". I am uncertain as to whether you are requesting:

1. correspondence which relates to "the payday lending industry" only in a general way;

2. correspondence which specifically relates to any "payday lender";
3. both of the classes of correspondence described above; or
4. any other class of correspondence.

Could you please advise which classes of correspondence you are requesting. In addition, please advise whether your request is for correspondence sent or received at any point in time or within a particular period of time. If your request is for correspondence sent or received within a particular period of time, please advise when that period begins and ends.

Once you have advised me of these matters, I will consider whether, among other things, a practical refusal reason under section 24AA of the FOI Act exists in relation to your request on the basis that your request would substantially and unreasonably divert the resources of ASIC from its other operations.

### **Paragraph 3 of the Attachment**

Paragraph 3 of the Attachment requests internal policy documents and directions regarding payday lending. Could you please advise whether your request is for internal policy documents and directions at any point in time or within a particular period of time. If your request is for internal policy documents and directions within a particular period of time, please advise when that period begins and ends.

### **Paragraphs 2, 4, 5, 6, 7 and 8 of the Attachment**

Paragraphs 2, 4, 5, 6 and 7 of the Attachment request "the number of" times certain events have occurred. Paragraph 8 of the Attachment requests "selection criteria" on which certain decisions are made. In my view, paragraphs 2, 4, 5, 6, 7 and 8 request information rather than documents.

I refer you to paragraphs 3.7 - 3.8 of the Information Commissioner's guidelines issued under section 93A of the FOI Act, which explain that an applicant's right of access under the FOI Act is to existing documents, rather than information, and that the FOI Act does not require an agency to create a new document in response to a request. Those paragraphs of the Information Commissioner's guidelines are available on

[http://www.oaic.gov.au/publications/guidelines/Part3\\_processing\\_requests\\_for\\_access.html](http://www.oaic.gov.au/publications/guidelines/Part3_processing_requests_for_access.html).

### **Request for an extension of time**

Section 15(5)(b) of the FOI Act provides that an agency must, not later than the end of the period of 30 days after the day on which a request is received, take all reasonable steps to enable an applicant to be notified of a decision on the request. Your request was received by ASIC on 17 December 2012. Therefore, ASIC is required to notify you of a decision on your request by 16 January 2013.

Section 15AA of the FOI Act provides that an agency may extend the period for dealing with a request, by a further period of no more than 30 days, if an applicant agrees in writing to the extension. ASIC is closed from 25 December 2012 to 1 January 2013. In addition, I am on leave from 25 December 2012 to 10 January 2013. In the circumstances, I request your agreement to an extension of time to 15 February 2013 to deal with your request, which is a further period of 30 days. Please urgently advise by email to me and Greg Kirk, who is also a recipient of this email, whether you agree to the extension.

If you have any queries in relation to your request, please contact me by email to [guy.dicarlo@asic.gov.au](mailto:guy.dicarlo@asic.gov.au) or by telephone on the number below.

Yours sincerely,

**Guy Di Carlo** | Lawyer | Deposit Takers, Credit & Insurers | ASIC | Sydney | T +61 2 9911 5161 | F +61 2 9911 2414

Please consider the environment before printing this document.

**NOTICE**

This e-mail and any attachments are intended for the addressee(s) only and may be confidential. They may contain legally privileged or copyright material. You should not read, copy, use or disclose them without authorisation. If you are not the intended recipient please contact the sender as soon as possible by return e-mail and then please delete both messages. This notice should not be removed.

# Divider Tab No. 13





ASIC

Australian Securities & Investments Commission

Level 5, 100 Market Street, Sydney  
GPO Box 9827 Sydney NSW 2001  
DX 653 Sydney

Telephone: (02) 9911 2000

Facsimile: (02) 9911 2414

ASIC website: [www.asic.gov.au](http://www.asic.gov.au)

Our Reference: 57801/12  
Your Reference:

18 March 2013



Dear 

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

I refer to your request under the *Freedom of Information Act 1982* (FOI Act), received by the Australian Securities and Investments Commission (ASIC) on 17 December 2012, in which you seek access to eight classes of documents.

By email dated 24 December 2012, you:

- (a) clarified the scope of the eight classes of documents to which you seek access; and
- (b) agreed, pursuant to section 15AA of the FOI Act, to an extension of time to 15 February 2013 for ASIC to deal with your request.

By letter dated 14 February 2013, I advised you that I would consult with affected parties in relation to certain documents which fall within the scope of your request and that I would notify you of my decision in relation to your request by 18 March 2013. I have consulted with affected parties and have received submissions from them. I had regard to those submissions when making my decision in relation to your request.

**Information Commissioner's Guidelines**

Section 93A(1) of the FOI Act provides that the Information Commissioner may issue guidelines for the purposes of the FOI Act. ASIC is required by section 93A(2) of the FOI Act to have regard to those guidelines when performing functions and exercising powers under the FOI Act. I had regard to those guidelines when making my decision in relation to your request.

By email dated 24 December 2012, I referred you to paragraphs 3.7 – 3.8 of the Information Commissioner's guidelines, which provide that a person's right of access under the FOI Act is to documents, rather than to information, which exist at the time a request for access is made and that, except in limited circumstances, the FOI Act does not require an agency to create a new document in response to a request for access.

### Decision

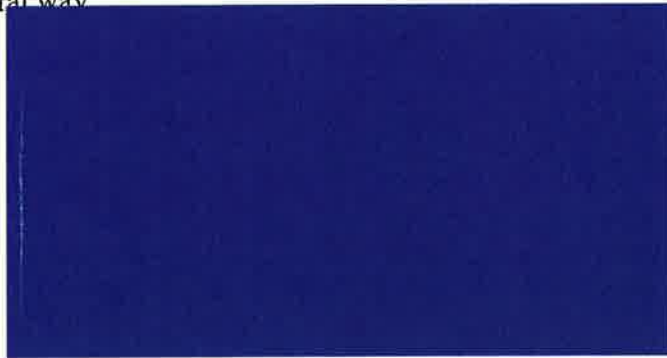
I am authorised, pursuant to section 23 of the FOI Act, to make a decision on behalf of ASIC in relation to your request. My decision in relation to each class of documents to which you seek access is set out below.

### Class One

Class one of the documents to which you seek access is:

Correspondence, dated between 1 January 2010 and 17 December 2012, between ASIC and the following parties in regards to the payday lending industry only in a general way:

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)



I have identified 72 documents that fall within class one (the Documents), which are described in the table set out in the Schedule to this letter (the Table). I have decided to:

- (a) refuse to give you access to the Documents which are marked "Exempt" in the Table. Section 11A(4) of the FOI Act provides that an agency is not required by the FOI Act to give a person access to a document at a particular time if, at that time, the document is an exempt document. Reasons why the Documents which are marked "Exempt" in the Table are exempt documents are set out below.

Section 22(2) of the FOI Act requires an agency to prepare and give an applicant access to an edited copy of an exempt document in the circumstances to which section 22(1) of the FOI Act refers. I have considered whether access can be granted to an edited copy of each of the Documents which are marked "Exempt". I find that it is not possible for ASIC to prepare an edited copy of any of the Documents which are marked "Exempt" with modifications that would ensure that the edited copy would not be an exempt document and would not disclose information that would reasonably be regarded as irrelevant to the request.

- (b) give you access to edited copies of the Documents which are marked "Partial Release" in the Table. The documents have been edited, pursuant to section 22 of the FOI Act, to remove information which is either exempt for the reasons set out below or irrelevant to your request.

**Reasons for Decision – Class One**

**Documents 8-9, 11-12, 18-21, 26, 29-30, 35, 40-41, 46-47, 49-51, 58-59, 61-62, 66-69 and 71-72: Exempt pursuant to section 45(1) of the FOI Act**

Section 45(1) of the FOI Act provides that a document is an exempt document if its disclosure under the FOI Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.

To found an action for breach of confidence in relation to information, the following five criteria must be satisfied:

1. the information must be specifically identified;
2. the information must have the necessary quality of confidentiality;
3. the information must have been communicated and received on the basis of a mutual understanding of confidence;
4. the information must have been disclosed, or threatened to be disclosed, without authority; and
5. unauthorised disclosure of the information has or will cause detriment.

Information in the Documents identified above, which is specifically identifiable, has the necessary quality of confidentiality in that it is only known to a limited group of people. The information was communicated to and received by ASIC on the basis of a mutual understanding of confidence and would cause detriment to the persons who provided it if it were to be disclosed. The unauthorised disclosure of information in the Documents identified above would found actions against ASIC for breach of confidence. Therefore, I find that the Documents identified above are exempt documents pursuant to section 45(1) of the FOI Act.

**Documents 1, 6-7, 13, 16, 23, 34, 42, 44-45 and 53-56: Exempt pursuant to section 47C(1) of the FOI Act**

Sections 47C(1)(a)-(c) of the FOI Act provide that a document is conditionally exempt if its disclosure under the FOI Act would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes of an agency, a Minister or the Government of the Commonwealth.

Information in the Documents identified above is in the nature of opinions, advice and recommendations obtained, prepared and recorded for the purposes of the deliberative

processes of ASIC, Treasury and a Minister. Therefore, I find that the Documents identified above are conditionally exempt documents pursuant to section 47C(1) of the FOI Act.

**Documents 2-5, 10, 14-15, 17, 22, 24-25, 27-28, 31-33, 36-39, 43, 48, 52, 57, 60, 63-65 and 70: Exempt pursuant to section 47F(1) of the FOI Act**

Section 47F(1) of the FOI Act provides that a document is a conditionally exempt document if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person. Personal information is defined in section 4(1) of the FOI Act as information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

The documents identified above contain information in relation to individuals whose identities are apparent. The information includes names, telephone numbers and email addresses. The personal information is not well known and does not appear to be available from publicly available sources. The individuals to whom the information relates are known to be (or to have been) associated with some of the matters dealt with in the documents, but only in a general sense and only to a certain extent.

Having regard to the matters to which section 47F(2) of the FOI Act refers, I find that the disclosure of the Documents identified above would involve the unreasonable disclosure of personal information and therefore, that those documents are conditionally exempt pursuant to section 47F(1) of the FOI Act to the extent that they would disclose the personal information.

### **Public Interest**

Section 11A(5) of the FOI Act provides that an agency must give a person access to a 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.

In relation to the Documents identified above as being conditionally exempt pursuant to section 47C(1) or 47F(1) of the FOI Act, I find that giving access to those Documents in the circumstances would be, on balance, contrary to the public interest and therefore, that the Documents are exempt documents. In making this finding, I took into account that the release of those Documents:

- (a) could, although only to a limited extent, promote the objects of the FOI Act, by potentially increasing discussion and comment of the Government's activities;
- (b) would not appear to inform debate on a matter of public importance;
- (c) would not promote effective oversight of public expenditure;
- (d) would not allow you to access your own personal information;

- (e) would not contribute to the administration of justice generally or for a particular person;
- (f) would not contribute to the enforcement of the criminal law;
- (g) would not contribute to innovation and the facilitation of research;
- (h) could reasonably be expected to impede the flow of information from agencies and consumer bodies to ASIC in the future;
- (i) could reasonably be expected to prejudice ASIC's ability to obtain similar information in the future; and
- (j) could reasonably be expected to prejudice ASIC's ability to obtain confidential information in the future.

### **Class Two**

Class two of the documents to which you seek access is:

All documents created since 1 July 2010 which record the number of reports of misconduct made to ASIC in regards to payday lending per year since 2009. If possible, broken down into the following categories by referring party:

- (a) internal referral;
- (b) Federal Government agency;
- (c) State Government agency;
- (d) consumer advocacy body;
- (e) credit licensees;
- (f) private citizens/companies; and
- (g) others.

I advise that there are no documents which fall within class two.

However, I also advise that ASIC publishes the number of reports of misconduct it has received in a financial year in its Annual Report, which is available on <http://www.asic.gov.au>. In that regard, I refer you to pages 47 – 48 and 144 of ASIC's 2011 – 2012 Annual Report.

### **Class Three**

Class three of the documents to which you seek access is:

Internal policy documents and directions, current as at 17 December 2012, regarding payday lending, including the names of the authors of each document.

I advise that there are no documents which fall within class three.

### **Classes Four, Five and Six**

Classes four, five and six of the documents to which you seek access are:

All documents created since 1 July 2010 which record the number of notices issued under sections 49, 266 and 267 of the *National Consumer Credit Protection Act 2009*:

- (a) overall; and
- (b) to recipients identified or considered to be "payday lenders".

I advise that there are no documents which fall within classes four, five or six.

However, I also advise that ASIC publishes the number of notices it has issued in a financial year, including under sections 49, 266 and 267 of the National Credit Act, in its Annual Report. In that regard, I refer you to page 150 of ASIC's 2011 – 2012 Annual Report.

### **Class Seven**

Class seven of the documents to which you seek access is:

All documents created since 1 July 2010 which record the number of applications made for warrants under section 269 of the *National Consumer Credit Protection Act 2009*:

- (a) overall; and
- (b) to recipients identified or considered to be "payday lenders".

I advise that there are no documents which fall within class seven.

### **Class Eight**

Class eight of the documents to which you seek access is:

All current documents setting out policy and direction upon which a decision is based to send notices under sections 49, 266 and 267 of the *National Consumer Credit Protection Act 2009*.

I have identified two documents which fall within class eight, which are described in the table below. I have decided to:

- (a) give you access to the document marked "Release"; and
- (b) give you access to an edited copy of the document marked "Partial Release". The document has been edited, pursuant to section 22 of the FOI Act, to remove information which is irrelevant to your request.

No	Description of document	Date	Decision on access	Relevant section
1	Information Sheet 145 – ASIC's compulsory information-gathering powers	09/11	Release	
2	Policy on use of ASIC's compulsory information gathering powers	19/7/12	Partial Release	

### Charges

I have decided, pursuant to regulation 3(1) of the *Freedom of Information (Charges) Regulations 1982* (the FOI Regulations), that you are liable to pay charges in relation to the processing of your request. Pursuant to regulation 11(1) of the FOI Regulations, the charges must be paid before access is granted to the documents. My assessment of the charges is a total of \$1,236.20. The basis on which the assessment has been made is set out below. The amount of the charges that you are liable to pay has been calculated using the rates fixed by the Schedule to the FOI Regulations.

Activity	Rate	Units	Total
Searching for and retrieving documents	\$15.00 per hour	34 hours	\$510.00
Decision making time, including: examining documents, consulting with affected parties and preparing edited copies of documents.	Zero for the first five hours and then \$20.00 for each subsequent hour	41 hours	\$720.00
Photocopying	\$0.10 per page	62 pages	\$6.20
<b>Total</b>			<b>\$1236.20</b>

I advise that you have the right to contend that the charges have been wrongly assessed, should be reduced or not imposed.

If you contend that the charges should be reduced or not imposed, I am required by section 29(5) of the FOI Act to take into account whether the payment of the charges, or part of them, would cause financial hardship to you and whether the giving of access to the documents in question is in the general public interest or in the interest of a substantial section of the public.

You must, within 30 days, notify me in writing of whether you:

- (a) agree to pay the charges;
- (b) contend that the charges have been wrongly assessed, or should be reduced or not imposed and explain your reasons for your contention; or
- (c) withdraw your request for access to the documents, in which case, you are not liable to pay the charges.

Your notification may be emailed to me at [guy.dicarlo@asic.gov.au](mailto:guy.dicarlo@asic.gov.au). If you do not give me your notification within 30 days, your request will be taken to have been withdrawn.

### **Review Rights**

I advise you of the following information pursuant to section 26(1)(c) of the FOI Act. In the event that you are dissatisfied with my decision:

1. You may, within 30 days after the day on which you have been notified of my 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 posted to me or to the Senior Manager, Administrative Law at GPO Box 9827 Sydney NSW 2001 or sent by email to [foirequest@asic.gov.au](mailto: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 to the Australian Information Commissioner in respect of the conduct of ASIC in the handling of your request. 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.

Yours sincerely,

Guy Di Carlo

Lawyer

Deposit Takers, Credit and Insurers

Authorised officer pursuant to section 23(1) of the FOI Act  
for the Australian Securities and Investments Commission



## Schedule

No	Description of document	Date	Decision on access	Relevant section
1	Email from [REDACTED] to ASIC attaching paper	11/05/10	Exempt	s.47C(1)
2	Email from ASIC to [REDACTED]	13/07/10	Partial Release	s.47F(1)
3	Email from ASIC to [REDACTED]	19/07/10	Partial Release	s.47F(1)
4	Email from ASIC to [REDACTED]	14/09/10	Partial Release	s.47F(1)
5	Email from [REDACTED] to ASIC attaching article	16/09/10	Partial Release	s.47F(1)
6	Email from [REDACTED] to ASIC	04/11/10	Exempt	s.47C(1)
7	Email from ASIC to [REDACTED]	04/11/10	Exempt	s.47C(1)
8	Email from [REDACTED] to ASIC attaching update for the [REDACTED]	11/11/10	Exempt	s.45(1)
9	Email from ASIC to [REDACTED] attaching [REDACTED] meeting agenda	12/11/10	Exempt	s.45(1)
10	Email from ASIC to [REDACTED]	18/11/10	Partial Release	s.47F(1)
11	Email from ASIC to [REDACTED] attaching minutes of [REDACTED] meeting	21/01/11	Exempt	s.45(1)
12	Email from ASIC to [REDACTED] attaching [REDACTED] meeting agenda	23/03/11	Exempt	s.45(1)
13	Email from ASIC to [REDACTED]	04/04/11	Exempt	s.47C(1)
14	Email from [REDACTED] to ASIC attaching media release	26/05/11	Partial Release	s.47F(1)
15	Email from [REDACTED] attaching recording of interview	27/05/11	Partial Release	s.47F(1)
16	Email from [REDACTED] to ASIC	07/07/11	Exempt	s.47C(1)
17	Email from [REDACTED] to ASIC	08/07/11	Partial Release	s.47F(1)
18	Email from ASIC to [REDACTED] attaching minutes of [REDACTED] meeting	15/08/11	Exempt	s.45(1)
19	Email from [REDACTED] attaching update for the [REDACTED]	16/08/11	Exempt	s.45(1)
20	Email from ASIC to [REDACTED] attaching [REDACTED] meeting agenda	18/08/11	Exempt	s.45(1)
21	Email from ASIC to [REDACTED]	29/08/11	Exempt	s.45(1)
22	Email from ASIC to [REDACTED]	01/09/11	Partial Release	s.47F(1)
23	Email from ASIC to [REDACTED]	06/09/11	Exempt	s.47C(1)

24	Email from ASIC to [REDACTED]	12/09/11	Partial Release	s.47F(1)
25	Email from ASIC to [REDACTED] attaching articles	14/09/11	Partial Release	s.47F(1)
26	Email from [REDACTED] to ASIC and [REDACTED]	06/10/11	Exempt	s.45
27	Emails from ASIC to [REDACTED]	07/10/11	Partial Release	s.47F(1)
28	Email from ASIC to [REDACTED]	13/10/11	Partial Release	s.47F(1)
29	Email from ASIC to [REDACTED] attaching minutes of [REDACTED] meeting	09/11/11	Exempt	s.45(1)
30	Email from ASIC to [REDACTED] attaching minutes of [REDACTED] meeting	15/11/11	Exempt	s.45(1)
31	Email from ASIC to [REDACTED]	22/11/11	Partial Release	s.47F(1)
32	Email from ASIC to [REDACTED]	22/11/11	Partial Release	s.47F(1)
33	Email from ASIC to [REDACTED]	22/11/11	Partial Release	s.47F(1)
34	Email from ASIC to [REDACTED]	9/02/12	Exempt	s.47C(1)
35	Email from ASIC to [REDACTED] attaching minutes of [REDACTED] meeting	17/02/12	Exempt	s.45(1)
36	Email from [REDACTED] to ASIC	28/02/12	Partial Release	s.47F(1)
37	Email from ASIC to [REDACTED]	28/02/12	Partial Release	s.47F(1)
38	Email from [REDACTED] to ASIC	05/03/12	Partial Release	s.47F(1)
39	Email from ASIC to [REDACTED]	05/03/12	Partial Release	s.47F(1)
40	Email from [REDACTED] attaching update for the [REDACTED]	06/03/12	Exempt	s.45(1)
41	Email from ASIC to [REDACTED] attaching [REDACTED] meeting agenda	08/03/12	Exempt	s.45(1)
42	Email from [REDACTED] to ASIC	04/04/12	Exempt	s.47C(1)
43	Email from [REDACTED] to ASIC	18/05/12	Partial Release	s.47F(1)
44	Email from [REDACTED] to ASIC	21/05/12	Exempt	s.47C(1)
45	Email from ASIC to [REDACTED]	22/05/12	Exempt	s.47C(1)
46	Email from ASIC to [REDACTED] attaching minutes of [REDACTED] meeting	05/06/12	Exempt	s.45(1)
47	Email from ASIC to [REDACTED] attaching [REDACTED] meeting agenda	13/06/12	Exempt	s.45(1)
48	Email from [REDACTED] to ASIC	13/06/12	Partial Release	s.47F(1)
49	Email from [REDACTED] to ASIC attaching paper	13/06/12	Exempt	s.45(1)
50	Email from [REDACTED] to ASIC attaching update for the [REDACTED]	17/06/12	Exempt	s.45(1)

51	Email from ASIC to [REDACTED]	29/06/12	Exempt	s.45(1)
52	Email from ASIC to [REDACTED]	07/08/12	Partial Release	s.47F(1)
53	Email from [REDACTED] to ASIC	10/08/12	Exempt	s.47C(1)
54	Email from ASIC to [REDACTED]	10/08/12	Exempt	s.47C(1)
55	Email from [REDACTED] to ASIC attaching letters	10/08/12	Exempt	s.47C(1)
56	Email from ASIC to [REDACTED]	14/08/12	Exempt	s.47C(1)
57	Email from [REDACTED] to ASIC	15/08/12	Partial Release	s.47F(1)
58	Email from [REDACTED] to ASIC attaching update for the [REDACTED]	16/08/12	Exempt	s.45(1)
59	Email from ASIC to [REDACTED] attaching [REDACTED] meeting agenda	18/08/12	Exempt	s.45(1)
60	Email from [REDACTED] to ASIC	20/08/12	Partial Release	s.47F(1)
61	Email from [REDACTED] to ASIC	13/09/12	Exempt	s.45(1)
62	Email from ASIC to [REDACTED]	13/09/12	Exempt	s.45(1)
63	Email from [REDACTED] to ASIC	14/09/12	Partial Release	s.47F(1)
64	Email from ASIC to [REDACTED]	22/10/12	Partial Release	s.47F(1)
65	Email from ASIC to [REDACTED]	1/11/12	Partial Release	s.47F(1)
66	Email from [REDACTED] to ASIC attaching update for the [REDACTED]	08/11/12	Exempt	s.45(1)
67	Email from [REDACTED] to ASIC attaching update for the [REDACTED]	14/11/12	Exempt	s.45(1)
68	Email from ASIC to [REDACTED] attaching [REDACTED] meeting agenda	14/11/12	Exempt	s.45(1)
69	Email from ASIC to [REDACTED] attaching update for the [REDACTED]	15/11/12	Exempt	s.45(1)
70	Email from ASIC to [REDACTED]	21/11/12	Partial Release	s.47F(1)
71	Email from [REDACTED] to ASIC attaching slides	30/11/12	Exempt	s.45(1)
72	Email from [REDACTED] to ASIC and [REDACTED]	04/12/12	Exempt	s.45(1)

# Divider Tab No. 14

Our Ref: [REDACTED]  
Your Ref: [REDACTED]

26 June 2012

The Senior Manager  
Administrative Law Team  
Australian Securities & Investments Commission

Via email: FOIrequest@asic.gov.au

Dear Sir/Madam

**RE: [REDACTED] APPLICATION UNDER THE FREEDOM OF  
INFORMATION ACT 1982 (CTH)**

We act for Mr William Lewski.

Mr Lewski hereby makes an application (by virtue of this letter) under the *Freedom of Information Act 1982 (Cth) (Act)* for access to documents held by the Australian Securities & Investments Commission (ASIC) in respect of its past dealings with [REDACTED]

1. This request for access is, for the purposes of the Act, an application made pursuant to Part III of the Act.
2. On 10 July 2006, a meeting was held at the Melbourne offices of ASIC. The following people attended that meeting:
  - (a) On behalf of ASIC: Rhian Richards, Ramon Garcia, Tim King, Shany Chen, Frances Wong;
  - (b) On behalf of [REDACTED] and [REDACTED]
  - (c) [REDACTED]

**(First Meeting)**
3. Further to the First Meeting, in the afternoon of 10 July 2006:
  - (a) Subsequent discussions took place between Ramon Garcia and Tim King of ASIC and [REDACTED] and [REDACTED]

- (b) Subsequent discussions took place between Shany Chen of ASIC, [REDACTED]

**(10 July 2006 Discussions)**

4. On 19 March 2007, a meeting was held at the Melbourne offices of ASIC. The following people attended that meeting:

(a) On behalf of ASIC: Jeremy Cooper, Richard Cockburn, John Price, Warren Day;

(b) On behalf of [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

(e) [REDACTED]

**(Second Meeting)**

5. On 5 July 2007 a meeting was held at the Melbourne offices of ASIC. The following people attended that meeting:

(a) On behalf of ASIC: Corinne MacKenzie, Jenny Taing, Alex Purvis and Rhian Richards;

(b) On behalf of [REDACTED]  
and [REDACTED]

(c) [REDACTED]

**(Third Meeting)**

6. In relation to those meetings, our client hereby applies for access to the following documents which on our instructions are in the possession, custody, control and/or power of ASIC:

**First Meeting**

(a) Any document (including documents created by, created for and/or used or reviewed by Rhian Richards, Ramon Garcia, Tim King, Shany Chen and Frances Wong) created by, created for, and/or otherwise used by ASIC in preparation for the First Meeting;

(b) Any document (including documents created by, created for and/or used or reviewed by Rhian Richards, Ramon Garcia, Tim King, Shany Chen and Frances Wong) created by, created for and/or otherwise used by ASIC during the course of the First Meeting; and

(c) Any document (including documents created by, created for and/or used or reviewed by Rhian Richards, Ramon Garcia, Tim King, Shany

Chen and Frances Wong) created by, created for and/or otherwise used by ASIC after the conclusion of the First Meeting summarising or otherwise commenting on the First Meeting.

10 July 2006 Discussions

- (a) Any document (including documents created by, created for and/or used or reviewed by Ramon Garcia, Tim King and Shany Chen) created by, created for, and/or otherwise used by ASIC in preparation for the 10 July 2006 Discussions;
- (b) Any document (including documents created by, created for and/or used or reviewed by Ramon Garcia, Tim King and Shany Chen) created by, created for and/or otherwise used by ASIC during the course of the 10 July 2006 Discussions; and
- (c) Any document (including documents created by, created for and/or used or reviewed by Ramon Garcia, Tim King and Shany Chen) created by, created for and/or otherwise used by ASIC after the conclusion of the 10 July 2006 Discussions summarising or otherwise commenting on the 10 July 2006 Discussions.

Second Meeting

- (a) Any document (including documents created by, created for and/or used or reviewed by Jeremy Cooper, Richard Cockburn, John Price and Warren Day) created by, created for, and/or otherwise used by ASIC in preparation for the Second Meeting;
- (b) Any document (including documents created by, created for and/or used or reviewed by Jeremy Cooper, Richard Cockburn, John Price and Warren Day) created by, created for and/or otherwise used by ASIC during the course of the Second Meeting; and
- (c) Any document (including documents created by, created for and/or used or reviewed by Jeremy Cooper, Richard Cockburn, John Price and Warren Day) created by, created for and/or otherwise used by ASIC after the conclusion of the Second Meeting summarising or otherwise commenting on the Second Meeting.

Third Meeting

- (a) Any document (including documents created by, created for and/or used or reviewed by Corinne MacKenzie, Jenny Taing, Alex Purvis and Rhian Richards) created by, created for, and/or otherwise used by ASIC in preparation for the Third Meeting;
- (b) Any document (including documents created by, created for and/or used or reviewed by Corinne MacKenzie, Jenny Taing, Alex Purvis and Rhian Richards) created by, created for and/or otherwise used by ASIC during the course of the Third Meeting; and

- (c) Any document (including documents created by, created for and/or used or reviewed by Corinne MacKenzie, Jenny Taing, Alex Purvis and Rhian Richards) created by, created for and/or otherwise used by ASIC after the conclusion of the Third Meeting summarising or otherwise commenting on the Third Meeting.

- 7. For the avoidance of doubt, the term "document" includes any document, correspondence, memorandum, handwritten note, file note, email and otherwise any form of communication whether internal or external to ASIC in all mediums including hard copy and electronic.

Notices under the Act can be provided to us by email to [REDACTED] or by post to [REDACTED]. Please advise us in advance of the volume of documents you propose to produce and the extent of the charges you may wish to levy in accordance with the Act.

We look forward to hearing from you.

Yours faithfully

[REDACTED]



# Divider Tab No. 15



**ASIC**

Australian Securities & Investments Commission

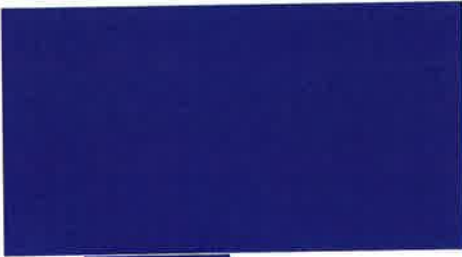
Your Ref: [REDACTED]  
Our Ref:

CLO 2012/15334

Level 5, 100 Market Street, Sydney  
GPO Box 9827 Sydney NSW 2001  
DX 653 Sydney

Telephone: (02) 9911 2000  
Facsimile: (02) 9911 2414

10 July 2012



Dear [REDACTED]

**Freedom of Information Request –  
Notice to Identify Documents under Section 24AB of the FOI Act**

I refer to your request under the *Freedom of Information Act* 1982 (**FOI Act**) dated 26 June 2012, received by this office on 26 June 2012, in which you sought access to documents and more specifically the following information:

- any document (including documents created by, created for and/or used or reviewed by Rhian Richards, Ramon Garcia, Tim King, Shany Chen and Frances Wong) created by, created for, and/or otherwise used by ASIC in preparation or used by ASIC in preparation for, during the course of and after the conclusion of a meeting on 10 July 2006 (including summarising or otherwise commenting on that meeting) at the Melbourne offices of ASIC attended by representatives from ASIC, [REDACTED]
- any document (including documents created by, created for and/or used or reviewed by Ramon Garcia, Tim King and Shany Chen) created by or used by ASIC in preparation for, during the course of and after the conclusion of a discussion on 10 July 2006 (including summarising or otherwise commenting on those discussions) between representatives from ASIC, [REDACTED]
- any document (including documents created by, created for and/or used or reviewed by Jeremy Cooper, Richard Cockburn, John Price and Warren Day) created by or used by ASIC in preparation for, during the course of and after the conclusion of a meeting on 19 March 2007 (including summarising or otherwise commenting on that meeting) at the Melbourne offices of ASIC attended by representatives from ASIC, [REDACTED]

- any document (including documents created by, created for and/or used or reviewed by Corinne MacKenzie, Jenny Taing, Alex Purvis and Rhian Richards) created by or used by ASIC in preparation for, during the course of and after the conclusion of a meeting on 5 July 2007 (including summarising or otherwise commenting on that meeting) at the Melbourne offices of ASIC attended by representatives from ASIC [REDACTED]

I advise that upon a further examination of your request, it does not comply with section 15(2)(b) of the FOI Act as it does not provide enough information to enable me to identify the documents to which you seek access. Section 15(2)(b) states that a request 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 the Australian Securities and Investments Commission (ASIC) may, in accordance with section 24(1)(b) of the FOI Act, refuse to process your application.

In its current form, it would be my intention to refuse access to the documents sought in your letter. However to assist you to make a valid request I make the following comments.

In pursuing a request under the FOI Act, I would however invite you to further clarify the nature of the documents to which access is sought. In this regard, I comment as follows as to what clarification the ASIC requires in order answer your FOI request.

You requested, *"any document .... created by , created for, and/or otherwise used by ASIC in preparation"* for the three meetings dated 10 July 2006, 19 March 2007 and 5 July 2007 respectively and the 10 July 2006 discussions.

You also state in paragraph 7 of your request the following:

*"For the avoidance of doubt, the term "document" includes any document, correspondence, memorandum, handwritten note, file note, email and otherwise any form of communication whether internal or external to ASIC in all mediums including hard copy and electronic."*

Your request is very broad in nature and it is not clear what type of documents you seek in relation to your request. Can you please identify specific documents you seek in this regard? Are you able to narrow the broad nature of your request so that specific documents can be identified rather than seeking *"all documents"*?

Careful attention to the terms of the request can significantly reduce the provision of unrequired documents and thereby impact substantially upon any potential cost to you of the request.

As a general rule, an application must be processed within 30 days. However, 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 a request in writing which contains sufficient information to identify the documents required.

Please note that following any consultation, should you wish to amend the terms of your request, you are required, in compliance with section 15(2)(a) of the Act to confirm in writing the terms of such amended request.

Pursuant to section 24AB(6) of the Act, before the end of the consultation period you are required to have done one of the following:

- (a) withdrawn the request;
- (b) made a revised request;
- (c) indicated that you do not wish to revise the request

Should I not hear from you in respect to the clarification of the terms of your request within 14 days after the date of this letter your request will, in accordance with sections 24AB(6) and s24AB(7) of the Act, be taken to be withdrawn.

If you have any queries regarding any of the above please contact me on (02) 9911 2827 or by email on [nicholas.goodstone@asic.gov.au](mailto:nicholas.goodstone@asic.gov.au).

Yours sincerely

Nicholas Goodstone  
(Authorised decision-maker under subsection 23(1) of the FOI Act)

# Divider Tab No. 16

Our Ref: [REDACTED]  
Your Ref: [REDACTED]

12 July 2012

The Senior Manager  
Administrative Law Team  
Australian Securities & Investments Commission  
Via email: FOIrequest@asic.gov.au

and to:

Mr Nicholas Goodstone  
Australian Securities & Investments Commission  
Via email: Nicholas.Goodstone@asic.gov.au

Dear Sir/Madam

RE: [REDACTED] APPLICATION UNDER THE FREEDOM OF  
INFORMATION ACT 1982 (CTH)

We act for [REDACTED]

We refer to your letter dated 10 July 2012.

[REDACTED] hereby makes an amended application (by virtue of this letter) under the *Freedom of Information Act 1982 (Cth) (Act)* for access to documents held by the Australian Securities & Investments Commission (ASIC) in respect of its past dealings with Australian Property Custodian Holdings Limited ACN 095 474 436 (APCH).

1. This request for access is, for the purposes of the Act, an application made pursuant to Part III of the Act.
2. On 10 July 2006, a meeting was held at the Melbourne offices of ASIC. The following people attended that meeting:
  - (a) On behalf of ASIC: Rhian Richards, Ramon Garcia, Tim King, Shany Chen, Frances Wong;
  - (b) On behalf of [REDACTED]
  - (c) [REDACTED]

**(First Meeting)**

3. Further to the First Meeting, in the afternoon of 10 July 2006:
- (a) Subsequent discussions took place between Ramon Garcia and Tim King of ASIC and [REDACTED]
  - (b) Subsequent discussions took place between Shany Chen of ASIC, [REDACTED]

**(10 July 2006 Discussions)**

4. On 19 March 2007, a meeting was held at the Melbourne offices of ASIC. The following people attended that meeting:

(a) On behalf of ASIC: Jeremy Cooper, Richard Cockburn, John Price, Warren Day;

(b) On behalf of [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

(e) [REDACTED]

**(Second Meeting)**

5. On 5 July 2007 a meeting was held at the Melbourne offices of ASIC. The following people attended that meeting:

(a) On behalf of ASIC: Corinne MacKenzie, Jenny Taing, Alex Purvis and Rhian Richards;

(b) On behalf of [REDACTED]  
and [REDACTED]

(c) [REDACTED]

**(Third Meeting)**

6. In relation to those meetings, our client hereby applies for access to the following documents which on our instructions are in the possession, custody, control and/or power of ASIC:

**First Meeting**

- (a) Any memorandum, file note, agenda and/or email (including those created by, created for and/or used or reviewed by Rhian Richards, Ramon Garcia, Tim King, Shany Chen and Frances Wong) used by ASIC in preparation for the First Meeting;
- (b) Any memorandum, file note, agenda and/or email (including those created by, created for and/or used or reviewed by Rhian Richards,

Ramon Garcia, Tim King, Shany Chen and Frances Wong) used by ASIC during the course of the First Meeting; and

- (c) Any memorandum, file note, correspondence and/or email (including those created by, created for and/or used or reviewed by Rhian Richards, Ramon Garcia, Tim King, Shany Chen and Frances Wong) used by ASIC after the conclusion of the First Meeting summarising or otherwise commenting on the First Meeting.

#### 10 July 2006 Discussions

- (a) Any memorandum, file note, agenda and/or email (including those created by, created for and/or used or reviewed by Ramon Garcia, Tim King and Shany Chen) used by ASIC in preparation for the 10 July 2006 Discussions;
- (b) Any memorandum, file note, agenda and/or email (including those created by, created for and/or used or reviewed by Ramon Garcia, Tim King and Shany Chen) used by ASIC during the course of the 10 July 2006 Discussions; and
- (c) Any memorandum, file note, correspondence and/or email (including those created by, created for and/or used or reviewed by Ramon Garcia, Tim King and Shany Chen) used by ASIC after the conclusion of the 10 July 2006 Discussions summarising or otherwise commenting on the 10 July 2006 Discussions.

#### Second Meeting

- (a) Any memorandum, file note, agenda and/or email (including those created by, created for and/or used or reviewed by Jeremy Cooper, Richard Cockburn, John Price and Warren Day) used by ASIC in preparation for the Second Meeting;
- (b) Any memorandum, file note, agenda and/or email (including those created by, created for and/or used or reviewed by Jeremy Cooper, Richard Cockburn, John Price and Warren Day) used by ASIC during the course of the Second Meeting; and
- (c) Any memorandum, file note, correspondence and/or email (including those created by, created for and/or used or reviewed by Jeremy Cooper, Richard Cockburn, John Price and Warren Day) used by ASIC after the conclusion of the Second Meeting summarising or otherwise commenting on the Second Meeting.

#### Third Meeting

- (a) Any memorandum, file note, agenda and/or email (including those created by, created for and/or used or reviewed by Corinne MacKenzie, Jenny Taing, Alex Purvis and Rhian Richards) used by ASIC in preparation for the Third Meeting;



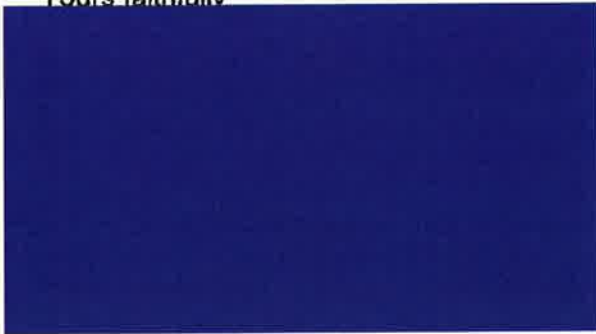
12 July 2012

- (b) Any memorandum, file note, agenda and/or email (including those created by, created for and/or used or reviewed by Corinne MacKenzie, Jenny Taing, Alex Purvis and Rhian Richards) used by ASIC during the course of the Third Meeting; and
- (c) Any memorandum, file note, correspondence and/or email (including those created by, created for and/or used or reviewed by Corinne MacKenzie, Jenny Taing, Alex Purvis and Rhian Richards) used by ASIC after the conclusion of the Third Meeting summarising or otherwise commenting on the Third Meeting.

Notices under the Act can still be provided to us by email to [REDACTED] or by post to [REDACTED]. Please advise us in advance of the volume of documents you propose to produce and the extent of the charges you may wish to levy in accordance with the Act.

We look forward to hearing from you.

Yours faithfully



# Divider Tab No. 17



**ASIC**

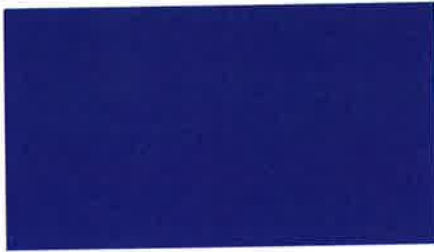
Australian Securities & Investments Commission

Your Ref: [REDACTED]  
Our Ref: CLO 2012/15334

Level 5, 100 Market Street, Sydney  
GPO Box 9827 Sydney NSW 2001  
DX 653 Sydney

22 August 2012

Telephone: (02) 9911 2000  
Facsimile: (02) 9911 2414



Dear [REDACTED]

**Freedom of Information Request for access to documents – Pursuant to the Freedom of Information Act 1982 (Cth)**

I refer to your request under the *Freedom of Information Act* 1982 (FOI Act) dated 26 June 2012, received by this office on 26 June 2012, in which you sought access to documents. I sent you an acknowledgement letter on 3 July 2012 in relation to your request. I then sent you a section 24AB notice dated 10 July 2012 upon revision of your FOI request in which I advised that your request did not comply with section 15(2)(b) of the FOI Act as it did not provide me with sufficient information to enable me to identify the documents to which you sought access.

You responded to my section 24AB notice with a letter dated 12 July 2012 containing a revised FOI request in which you sought access to the following documents:

- any memorandum, file note, agenda and/or email (including those created by, created for and/or used or reviewed by Rhian Richards, Ramon Garcia, Tim King, Shany Chen and Frances Wong) used by ASIC in preparation or used by ASIC in preparation for, during the course of and after the conclusion of a meeting on 10 July 2006 (including summarising or otherwise commenting on that meeting);
- any memorandum, file note, agenda and/or email (including those created by, created for and/or used or reviewed by Ramon Garcia, Tim King and Shany Chen) used by ASIC in preparation for, during the course of and after the conclusion of a discussion on 10 July 2006 (including summarising or otherwise commenting on those discussions);

- any memorandum, file note, agenda and/or email (including those created by, created for and/or used or reviewed by Jeremy Cooper, Richard Cockburn, John Price and Warren Day) used by ASIC in preparation for, during the course of and after the conclusion of a meeting on 19 March 2007 (including summarising or otherwise commenting on that meeting); and
- any memorandum, file note, agenda and/or email (including those created by, created for and/or used or reviewed by Corinne MacKenzie, Jenny Taing, Alex Purvis and Rhian Richards) used by ASIC in preparation for, during the course of and after the conclusion of a meeting on 5 July 2007 (including summarising or otherwise commenting on that meeting).

I also wrote to you on 18 July 2012 informing you that certain documents which fell within the terms of your request contained information which is information about the business, commercial or financial affairs of an organisation and that given this I would, pursuant to sections 27 or 27A of the FOI Act, be consulting with affected third parties to obtain their views before making a final decision on whether or not to release the documents.

Accordingly, in the course of the decision making process, there has been consultation with affected third parties in respect of the applicability of exemption provisions to documents caught by your request, and I have taken this into consideration in making this decision.

### **My decision**

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

Your amended request dated 12 July 2012 (as with your original request dated 26 June 2012) was clear in the sense that sought documents related to 3 specified meetings and a discussion which I will refer to below. The first of these meetings is dated 10 July 2006.

I have identified a total of 17 documents as coming within the terms of your request (the documents). The documents are listed in the attached schedule. I have conducted searches of various ASIC internal databases; contacted ASIC staff members referred to in your request and searched numerous hard copy files.

Following the searches I was able to locate documents that related to the third meeting only.

#### First meeting – 10 July 2006

ASIC searches could not identify any documents that fell within the scope of this aspect of your request. As such, I advise that there were no documents falling within this part of your request.

#### 10 July 2006 Discussions

ASIC searches could not identify any documents that fell within the scope of this aspect of your request. As such, I advise that there were no documents falling within this part of your request.

Second meeting – 19 March 2007

ASIC searches could not identify any documents that fell within the scope of this aspect of your request. As such, I advise that there were no documents falling within this part of your request.

Third meeting – 5 July 2007

ASIC searches identified a total of 17 documents falling within the scope of this aspect of your request.

I advise that I have decided to release the documents marked "Release" on the attached schedule.

The documents marked "Exempt" as per the attached Schedule are exempt from release for the following reasons:

**Documents numbered 7 and 15**

**Exempt under section 47C of the FOI Act**

**Section 47C – Public interest conditional exemptions - deliberative processes**

Section 47C of the FOI Act states:

*General rule*

(1) *A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*

- (a) *an agency; or*
- (b) *a Minister; or*
- (c) *the Government of the Commonwealth; or*
- (d) *the Government of Norfolk Island.*

*Exceptions*

- (2) *Deliberative matter does not include either of the following:*
- (a) *operational information (see section 8A);*
  - (b) *purely factual material.*

*Note:* *An agency must publish its operational information (see section 8).*

- (3) *This section does not apply to any of the following:*
- (a) *reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;*

(b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;

(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

The reference to "deliberative processes" in section 47C of the FOI Act refers to the thinking and reasoning processes of an agency, or the processes of reflection upon the wisdom and appropriateness of a proposal in relation to those processes.

The principal question which falls for determination under section s 47C(1) is whether or not a document has been prepared "in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency".

*"In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action."*<sup>1</sup>

In my view, disclosure of the documents numbered 7 and 15 would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of the deliberative process of ASIC.

The nature of the contents in documents numbered 7 and 15 discloses opinions, advice or recommendations that I believe have taken place for the purposes of the deliberative process of ASIC. A deliberative process may include the recording or exchange of, among other things, a collection of facts or opinions, including the pattern of facts or opinions considered.<sup>2</sup>

### **Public Interest – Section 11B**

In addressing the application of the relevant conditional exemption provisions (i.e. section 47C), I have considered whether the disclosure of the information caught by those provisions would at this time and on balance, be in the public interest.

I have considered the provisions of section 11B of the FOI Act, the nature of the information contained in the documents and the submissions made by third parties.

Public interest is at the core of the consideration of this aspect of section 47E of the FOI Act. I have considered your request and I have balanced it against the public interest in allowing the information to be released against whether the documents contain or refer to the deliberative processes of ASIC.

I am of the view that disclosure of the documents marked as "Exempt" in the schedule would not promote the factors favouring disclosure as contained within section 11B of

<sup>1</sup> See *Re JE Waterford and Department of Treasury (No 2)* (1984) 5 ALD 588 at 606.

<sup>2</sup> See *Chapman and Minister for Aboriginal and Torres Strait Islander Affairs* [1996] AATA 210.

the FOI Act. Given the nature of the material exempted, the public interest in the disclosure of the exempted material is outweighed by the need for confidentiality.

Documents numbered 7 and 15, if disclosed, would be contrary to the public interest because unless sensitive discussions between ASIC officers can occur internally with the confidence that such discussions will not be made public such a sharing of opinions may not be fully frank and open.

Having considered the public interest factors for and against disclosure, I find that it would be contrary to the public interest to grant access to these documents. Where release of the material may promote the objects of the FOI Act, including increasing the scrutiny, discussion, comment and review of the Government's activities, this public interest is outweighed in this instance by the need for confidentially attaching to sensitive deliberative discussions of the nature considered in these documents.

I am of the view that documents numbered 7 and 15 disclose information of a confidential nature relating to opinion and/or recommendation that has taken place in the course of and for the purposes of the deliberative processes of ASIC.

**Section 22 of the FOI Act provides:**

- (1) *This section applies if:*
- (a) *an agency or Minister decides:*
- (i) *to refuse to give access to an exempt document; or*
- (ii) *that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and*
- (b) *it is possible for the agency or Minister to prepare a copy.... modified by deletions, ensuring that:*
- (i) *access to the edited copy would be required to be given under section 11A (access to documents on request); and*
- (ii) *the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and*
- (c) *it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:*
- (i) *the nature and extent of the modification; and*
- (ii) *the resources available to modify the document; and*
- (d) *it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.*

I have considered whether, pursuant to section 22 of the FOI Act, it is possible to release the exempted documents with deletions such that the documents would no longer be exempt. I am satisfied that given the nature of the exempted documents and

the material contained therein, I find that section 22 redaction is not applicable in this instance.

### **Review rights**

I provide you with the following information as required by s26 of the FOI Act.

In the event that you are dissatisfied with my decision you may:

1. 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](mailto:foirequest@asic.gov.au).
2. 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. Lodge a complaint to the Australian Information Commissioner in respect to 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

Nicholas Goodstone  
(Authorised decision-maker under subsection 23(1) of the FOI Act)



**Schedule of Documents**

<b>Doc No.</b>	<b>Description of document</b>	<b>No of folios</b>	<b>Decision on access</b>	<b>Relevant section</b>
1.	ASIC Internal working document dated 3 July 2007	1	Release	
2.	Email from ASIC to 3 <sup>rd</sup> party dated 3 July 2007	1	Release	
3.	Email exchange between 3 <sup>rd</sup> party and ASIC dated 3 July 2007	2	Release	
4.	Email exchange between 3 <sup>rd</sup> party and ASIC dated 3 July 2007 and 4 July 2007	4	Release	
5.	ASIC Internal working document dated 4 July 2007	1	Release	
6.	ASIC Internal working document dated 4 July 2007	1	Release	
7.	ASIC Internal working document dated 4 July 2007	2	Exempt	Section 47C
8.	ASIC Internal working documents dated 4 July 2007	2	Release	
9.	ASIC Internal working documents dated 4 July 2007 and 5 July 2007 enclosing 1 attachment	4	Release	
10.	Email exchange between 3 <sup>rd</sup> party and ASIC dated 3 July 2007, 4 July 2007 and 5 July 2007	6	Release	
11.	ASIC Internal working document dated 5 July 2007	2	Release	
12.	Email exchange between 3 <sup>rd</sup> party and ASIC dated 5 July 2007 enclosing 1 attachment	2	Release	
13.	Email from 3 <sup>rd</sup> party and ASIC dated 6 July 2007 enclosing 2 attachments	5	Release	
14.	ASIC Internal working document dated 6 July 2007	1	Release	
15.	ASIC Internal working document dated 6 July 2007	1	Exempt	Section 47C
16.	ASIC Internal working document dated 6 July 2007	1	Release	
17.	Email exchange between 3 <sup>rd</sup> party and ASIC dated 6 July 2007 enclosing 2 attachments	8	Release	

# Divider Tab No. 18



[Redacted]

to: foirequest, [Redacted]

19/04/2012 04:08 PM

Hide Details

From: [Redacted]

To: <foirequest@asic.gov.au>, [Redacted]

History: This message has been forwarded.

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This email message has been processed by MIMESweeper

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To officer in charge of FOI request, Under the FOI ACT I respectfully request all documentation regarding the case ref [Redacted] and also any further documentation that my result due to reopening this investigation. My address for hard copies can be sent to: [Redacted]

Thank You , Sincerely [Redacted]

# Divider Tab No. 19

## Imported Email

In Confidence

COMPLETED

Nicholas Jeha

01/05/2012 03:43 PM

To: [REDACTED]

cc:

cc: (bcc: Catherine Wheaton-Lynch/Sydney/NSW/ASIC)

Fax to:

Subject: Your Request under the Freedom of Information Act 1982 (Cth)  
[SEC=IN-CONFIDENCE]

Our Reference: 18105/12

1 May 2012

[REDACTED]  
By email: [REDACTED]

Dear [REDACTED]

### **Freedom of Information Request – Notice to Identify Documents under Section 24AB of the FOI Act**

I refer to your email of 19 April 2012 in which you sought access to documents under the *Freedom of Information Act 1982* (Cth) ("the FOI Act"). Your request seeks "All documentation regarding the case ref: [REDACTED] and also any further documentation that may result due to reopening this investigation."

I advise that your request does not comply with section 15(2)(b) of the FOI Act as it does not provide enough information to enable me to identify the documents to which you seek access. Section 15(2)(b) states that a request 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 FOI Act, refuse to process your application.

In its current form, it would be my intention to refuse access to the documents sought in your letter. However, to assist you to make a valid request I make the following comments:

- Please explain what you mean by "all documentation *regarding* the case ref: [REDACTED]. The term "*regarding*" is unclear and ambiguous and requires further clarification in order for us to determine which documents you require.
- Please explain what you mean by "any further documentation *that may result* due to reopening this investigation". The words "*that may result*" is open ended, unclear and ambiguous.
- Please explain what you mean by "*reopening this investigation*".

You should be aware that while the first 5 hours of decision making in respect to FOI requests

is free of charge, ASIC is entitled to charge for searching and retrieval of documents and decision making time in excess of 5 hours. Careful attention to the terms of the request can very significantly reduce the provision of unrequired documents and thereby impact substantially upon the cost of the request.

As a general rule, an application must be processed within 30 days. However, 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 a request in writing which contains sufficient information to identify the documents required.

You may wish to telephone me on 02 9911 5242 for assistance in making your request in a revised form, which removes the grounds for refusal. Should you wish to consult with me for this purpose, you are required to contact me within 14 days after the date that you receive this email.

Please note that following any consultation, should you wish to amend the terms of your request, you are required, in compliance with section 15(2)(a) of the FOI Act, to confirm in writing the terms of such amended request.

Pursuant to section 24AB(6) of the FOI Act, before the end of the consultation period you are required to have done one of the following

- (a) withdrawn the request;
- (b) made a revised request; and
- (c) indicated that you do not wish to revise the request.

Should I not hear from you in respect to the clarification of the terms of your request within 14 day after the date of this email, your request will, in accordance with sections 24AB(6) and s24AB(7) of the Act, be taken to be withdrawn.

Yours sincerely

**Nicholas Jeha**  
**(Authorised decision-maker under subsection 23(1) of the FOI Act) for the Australian Securities and Investments Commission**

Additional Readers

# Divider Tab No. 20

## Imported Email

In Confidence

COMPLETED

[REDACTED]  
07/05/2012 04:49 PM

To: [REDACTED]  
<nicholas.jeha@asic.gov.au>  
cc:  
cc:  
Fax to:  
Subject: RE: [REDACTED]

\*\*\*

This email message has been processed by MIMESweeper

\*\*\*

From: [REDACTED]  
To: [REDACTED]  
Subject: FW: [REDACTED]  
Date: Mon, 7 May 2012 06:21:48 +0000

To officer in charge of FOI request, Under the FOI ACT I respectfully request all documentation in the folder of case ref. [REDACTED]. My address for hard copies can be sent to: [REDACTED]  
[REDACTED] Thank You , Sincerely [REDACTED]

**Additional Readers**