

# Divider Tab No. 21



**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 2444


Our Reference: 18105/12


7 June 2012



Dear 

**Request Under the Freedom of Information Act 1982  
For Access to Documents**

I refer to your request dated 19 April 2012 under the *Freedom of Information Act 1982* ('the FOI Act') received by this office on 19 April 2012 in which you sought access to the following: "... all documents regarding the case ref.  and also any further documentation that may result due to reopening this investigation."

I refer to our telephone call dated 7 May 2012, requesting clarification of your FOI request. By email correspondence dated 7 May 2012, you confirmed your request seeking access to: "... all documentation in the folder of case ref. 

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

I have identified eight (8) documents which come within the terms of your request. These are listed in the Schedule to this letter.

**RELEVANT LEGISLATION**

**Section 11A(5) of the FOI Act states:**

*"An agency must give an applicant 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."*

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## **Conditionally Exempt Documents**

### **Section 47C: Public interest conditional exemptions – deliberative processes**

#### *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 an agency or Minister or of the Government of the Commonwealth.*

(2) *Deliberative matter does not include either of the following:*

- (a) *operational information (see section 8A);*
- (b) *purely factual material.*

### **Section 47E(d): Public interest conditional exemptions — certain operations of agencies**

Section 47E (d) of the FOI Act states:

*"A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to....."*

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- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

### **Section 47F: Public interest conditional exemptions – personal privacy**

Section 47F of the FOI Act states:

- (1) *A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*

### **Section 47G: Public interest conditional exemptions – business**

Section 47G of the FOI Act states:

- (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 organization 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*

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*affairs or that organization 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.*

**Section 22: Access to edited copies with exempt or irrelevant matter deleted**

Section 22 of the FOI Act states:

*(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.*

**Third Party Consultation**

I have taken submissions made by affected parties into consideration in determining this application.

**MY DECISION**

**Documents to be released**

I advise that I have decided to release documents 2, 3, 4 and 8 in the attached Schedule. Pursuant to section 22 of the FOI Act, document 2 will be released with deletions. These deletions are names of ASIC employees, which will not affect the nature of the document.

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### **Documents exempt from release**

I advise that I have decided not to release the documents 1, 5, 6 and 7, marked "Exempt" in the attached Schedule, on the grounds that the documents are exempt from release for the following reasons:

#### **Documents 1, 5 and 7**

##### ***Conditionally exempt - operations of agency: Section 47E(d) of the FOI Act***

The documents that I have determined to be conditionally exempt on the basis of section 47E(d) are ASIC's internal working documents including documents recording ASIC's assessment of documents provided by third parties.

Documents 1, 5 and 7 pertain to the confidential enquiries made by ASIC and confidential information provided to ASIC on a voluntary basis by named third parties.

I find that the disclosure of these documents would affect the way in which ASIC discharges or performs its functions. This in turn would, or could reasonably be expected to, have a substantially adverse effect on the proper and efficient conduct of ASIC's operations.

In accordance with section 11A(5) of the FOI Act, I have considered whether ~~disclosure of these documents would, on balance, be contrary to the public interest.~~ I find that the public benefit in disclosing these documents is outweighed by the adverse effects disclosure would have on the way in which ASIC discharges or performs its functions. Such an outcome would compromise ASIC's ability to effectively perform its statutory duties and ultimately protect investors, which would be contrary to the public interest.

Accordingly, I find that documents 1, 5 and 7 are conditionally exempt from release under section 47E(d) of the FOI Act.

#### **Documents 5 and 6**

##### ***Conditionally exempt - business: Section 47G(1)(b) of the FOI Act***

The documents I have determined to be conditionally exempt under section 47G(1)(b) are documents 5 and 6. These documents contain certain material pertaining to the business of a third party with which ASIC consulted.

The disclosure of documents 5 and 6 would or could reasonably be expected to prejudice the future supply of information to ASIC or the administration of matters administered by ASIC.

In particular, when making enquiries with third parties, we rely on the openness of those third parties and confidentiality in those communications in order to be able to obtain sufficient information to address the regulatory issues that have been identified.

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As such, I find that documents 5 and 6 are conditionally exempt from release under section 47G(1)(b) of the FOI Act.

**Document 1**

***Conditionally exempt – personal privacy: Section 47F of the FOI Act***

I have determined document 1 to be conditionally exempt from release on the basis that it contains personal information pertaining to third parties. I find the information contained in document 1 to be personal information, the disclosure of which would be unreasonable, in the circumstances.

Accordingly, I find that document 1 is conditionally exempt from release under section 47F of the FOI Act.

**Document 7**

***Conditionally exempt – deliberative processes: Section 47C of the FOI Act***

The disclosure of document 7 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 purpose of, the deliberative processes of ASIC.

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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.

This document reveals ASIC's administrative procedures and its methodology for performing its statutory functions. The nature and extent of ASIC's internal procedures and assessment activities, which are directed to recording areas of concerns or particularly issues which arise during the assessment process, is not publicly known. ASIC's effectiveness as a corporate regulator would be curtailed should this information be revealed.

As such, I find document 7 to relate to the deliberative processes of ASIC because it contains ASIC's then current opinion prepared in the course of and pursuant to these deliberative processes. As such, I find document 7 conditionally exempt from release pursuant to section 47C of the FOI Act.

**Public Interest**

***Contrary to the Public Interest: Section 11A(5) of the FOI Act***

I have considered the factors in s11A(5) of the provisions of the FOI Act and relevant FOI Guidelines in respect to the documents found to conditionally exempt above that:

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- i. Given the nature of the information contained in the documents, the maintenance of confidentiality regarding such information is essential to the proper and efficient conduct of ASIC's information-collecting operations.

Given the above, I am of the view that the public interest in disclosure of documents 1, 5, 6 and 7 is outweighed by the need for confidentiality, and the that disclosure of such information would have an adverse effect on ASIC's regulatory function.

## Section 22

Section 22 of the FOI Act provides that, where an agency or Minister decides not to grant access to a document on the grounds that it is an exempt document or that to grant access would disclose information that would reasonably be regarded as irrelevant to the request: 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 ... would not disclose such information ... and it is reasonably practical for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those decisions and resources available for the work, to make such a copy ... the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister 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, pursuant to section 22 of the FOI Act, access should be granted to a copy of the documents 1, 5, 6 and 7 with deletions. For the reasons explained above, I find that these documents are "exempt documents" as defined by the FOI Act. I further find that, from the nature of the documents, it is not reasonably practical to make a copy that would not be an exempt document. Moreover, if it was an exercise that was undertaken, I find that it is likely you would not wish to have access to such a copy.

## FINAL ASSESSMENT OF CHARGES

Although my letter of 1 May 2012 advises that charges may be assessed for time spent processing your application, I have decided not to impose processing charges in this instance.

## YOUR RIGHTS

I provide you with the following information as required by section 26 of the FOI Act. In the event that 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 NSW 2001 or by email to foirequest@asic.gov.au.
2. You may apply in writing to the Office of 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

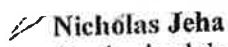
07 June 2012

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Commissioner at GPO Box 2999, Canberra ACT 2601 or GPO Box 5218, Sydney NSW 2001.

3. You may lodge a complaint to the Office of 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 at GPO Box 2999, Canberra ACT 2601 or GPO Box 5218, Sydney NSW 2001.

Yours sincerely

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

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07 June 2012

**Schedule of Documents**

No	Date of Document	Description of document	No of folios	Decision on access	Relevant section
1	29/11/2010	ASIC Internal Organisational Search	5	Exempt	47E(d) 47F
2	26/11/2010	Infoline Enquiry: File note	3	Edited copy released	
3	29/11/2010	Acknowledgment letter sent to [REDACTED]	1	Released	
4		Product Disclosure Statement	4	Released	
5	28/01/2011	Correspondence sent by ASIC to third party	2	Exempt	47E(d) 47G(1)(b)
6	02/02/2011	Correspondence received by ASIC from third party	2	Exempt	47G(1)(b)
7	07/02/2011	ASIC Internal Assessment of Regulatory Issues – Activity Number [REDACTED]	5	Exempt	47C 47E(d)
8	14/02/2011	Letter to [REDACTED] from ASIC	2	Released	

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## ASIC

Australian Securities & Investments Commission

Commonwealth Bank Building  
240 Queen Street, Brisbane  
GPO Box 9827 Brisbane QLD 4001  
DX 322 Brisbane

Telephone: (07) 3867 4700  
Facsimile: (07) 3867 4725

Our Reference: 27731/12  
PCS 2012/9993

28 June 2012

[Redacted]

By email:

[Redacted]

Dear

[Redacted]

### **Request for Internal Review Under Section 54B of The Freedom Of Information Act 1982**

I refer to your email of 11 June 2012 in which you request that an internal review be conducted in respect of the decision of 7 June 2012, contained in an email to you of the same date (**copy attached**), refusing you access to certain documents.

Your request for review of the decision is made in accordance with the requirements of section 54B(1) of the *Freedom of Information Act 1982* (FOI Act) and specifically seeks a review of the decision to refuse access to documents 1, 5, 6 and 7 in the Schedule of Documents (**attached**).

I am authorised to conduct the internal review under section 54 of the FOI Act.

### **RELEVANT LEGISLATION**

In addition to the sections outlined in the original decision of 7 June 2012, the following is also relevant to my decision:

#### **Exempt Documents**

#### **Section 37 Documents affecting enforcement of law and protection of public safety**

- (2) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*

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- (a) *prejudice the fair trial of a person or the impartial adjudication of a particular case;*
- (b) *disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or*
- (c) *prejudice the maintenance or enforcement of lawful methods for the protection of public safety.*

## **DECISION**

I advise that I have decided not to release documents 1, 5, 6 and 7, marked "Exempt" in the Schedule of Documents, on the grounds that the documents are exempt from release for the following reasons:

### Document 1

#### ***Exempt – documents affecting law enforcement: Section 37(2)(b) of the FOI Act***

Disclosure of the document would, or could reasonably be expected to, disclose lawful methods or procedures used by the Australian Securities and Investments Commission (ASIC) for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of law. Further, the disclosure of the document would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures.

As I have found the document to be exempt under section 37(2)(b) of the FOI Act it is not necessary to determine if it is also conditionally exempt under further provisions of the FOI Act. However, for completeness I have also considered whether this document is conditionally exempt.

#### ***Conditionally exempt – operations of agency: Section 47E(d) of the FOI Act***

The document is an internal document used to assist ASIC in undertaking its work as a regulator. Disclosure of the document would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of ASIC.

#### ***Conditionally exempt – personal privacy: Section 47F of the FOI Act***

The document contains various pieces of personal information about a person/s, but specifically names of people. I find that disclosure of this information would be unreasonable, noting that this information is not well known and the information is not information from publicly accessible sources.

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***Contrary to the public interest – Section 11A(5) of the FOI Act***

When considering the public interest in the disclosure of the document, being a conditionally exempt document, consideration has been given to the objects of the FOI Act. However, I find disclosure of the document could reasonably be expected to prejudice the fair treatment of individuals; harm the interests of an individual or group of individuals; and substantially inhibit ASIC's ability to administer the law. For these reasons, the public interest factors against disclosure outweigh the public interest factors in releasing this document.

***Not possible to release with deletions – Section 22 of the FOI Act***

For the reasons outlined above and given the nature of the document, it is not reasonably practical to make a copy of this document that would not be an exempt document.

**Document 5**

***Conditionally exempt – operations of agency: Section 47E(d) of the FOI Act***

The document is correspondence sent by ASIC to a third party in the course of undertaking its work as a regulator. Disclosure of the document would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of ASIC.

***Conditionally exempt – personal privacy: Section 47F of the FOI Act***

The document contains various pieces of personal information about a person/s, but specifically names of people, addresses and signatures. Consultation was undertaken with the relevant person/s in relation to the disclosure.

I find that disclosure of this information would be unreasonable, noting that this information is not well known and the information is not information from publicly accessible sources.

***Confidentially exempt – business: Section 47G(1)(a) of the FOI Act***

The document contains information concerning the business of a person/s. Consultation was undertaken with the relevant person/s in relation to the disclosure.

I find that the disclosure of such information would, or could reasonably be expected to, unreasonably affect the person/s adversely in respect to their lawful business.

***Contrary to the public interest – Section 11A(5) of the FOI Act***

When considering the public interest in the disclosure of the document, being a conditionally exempt document, consideration has been given to the objects of the FOI Act. However, I find disclosure of the document could reasonably be expected to prejudice the fair treatment of individuals; harm the interests of an individual or group

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of individuals; and substantially inhibit ASIC's ability to administer the law. For these reasons, the public interest factors against disclosure outweigh the public interest factors in releasing this document.

***Not possible to release with deletions – Section 22 of the FOI Act***

For the reasons outlined above and given the nature of the document, it is not reasonably practical to make a copy of this document that would not be an exempt document.

**Document 6**

***Conditionally exempt – operations of agency: Section 47E(d) of the FOI Act***

The document is correspondence received by ASIC from a third party in the course of undertaking its work as a regulator. Disclosure of the document would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of ASIC.

***Conditionally exempt – personal privacy: Section 47F of the FOI Act***

The document contains personal information about a person/s, but specifically names of people and addresses. Consultation was undertaken with the relevant person/s in relation to the disclosure.

I find that disclosure of this information would be unreasonable, noting that this information is not well known and the information is not information from publicly accessible sources.

***Confidentially exempt – business: Section 47G(1)(a) and (b) of the FOI Act***

The document contains information concerning the business of a person/s. Consultation was undertaken with the relevant person/s in relation to the disclosure.

I find that the disclosure of such information would, or could reasonably be expected to, unreasonably affect the person/s adversely in respect to their lawful business. Further, I find that disclosure could reasonably be expected to prejudice the future supply of information to ASIC for the purpose of undertaking ASIC's regulatory role.

***Contrary to the public interest – Section 11A(5) of the FOI Act***

When considering the public interest in the disclosure of the document, being a conditionally exempt document, consideration has been given to the objects of the FOI Act. However, I find disclosure of the document could reasonably be expected to prejudice the fair treatment of individuals; harm the interests of an individual or group of individuals; and substantially inhibit ASIC's ability to administer the law. For these reasons, the public interest factors against disclosure outweigh the public interest factors in releasing this document.

28 June 2012

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***Not possible to release with deletions – Section 22 of the FOI Act***

For the reasons outlined above and given the nature of the document, it is not reasonably practical to make a copy of this document that would not be an exempt document.

**Document 7**

***Exempt – documents affecting law enforcement: Section 37(2)(b) of the FOI Act***

Disclosure of the document would, or could reasonably be expected to, disclose lawful methods or procedures used by ASIC for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of law. Further, the disclosure of the document would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures.

As I have found the document to be exempt under section 37(2)(b) of the FOI Act it is not necessary to determine if it is also conditionally exempt under further provisions of the FOI Act. However, for completeness I have also considered whether this document is conditionally exempt.

***Conditionally exempt – deliberative process: Section 47C of the FOI Act***

The document contains ASIC's assessment of regulatory issues, administrative procedures and methodology. The specific information is not publicly known and the effectiveness of these procedures and methods, along with ASIC's effectiveness as a regulator, would be impacted by the disclosure of this document.

I find that disclosure of the document would disclose matter in the nature of, or related 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 involved in the functions of ASIC.

***Conditionally exempt – operations of agency: Section 47E(d) of the FOI Act***

Disclosure of the document would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of ASIC.

***Conditionally exempt – personal privacy: Section 47F of the FOI Act***

The document contains personal information about a person/s, but specifically names of people. I find that disclosure of this information would be unreasonable, noting that this information is not well known and the information is not information from publicly accessible sources.

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***Confidentially exempt – business: Section 47G(1)(a) and (b) of the FOI Act***

The document contains information concerning the business of a person/s. I find that the disclosure of such information would, or could reasonably be expected to, unreasonably affect the person/s adversely in respect to their lawful business. Further, I find that disclosure could reasonably be expected to prejudice the future supply of information to ASIC for the purpose of undertaking ASIC's regulatory role.

***Contrary to the public interest – Section 11A(5) of the FOI Act***

When considering the public interest in the disclosure of the document, being a conditionally exempt document, consideration has been given to the objects of the FOI Act. However, I find disclosure of the document could reasonably be expected to prejudice the fair treatment of individuals; harm the interests of an individual or group of individuals; and substantially inhibit ASIC's ability to administer the law. For these reasons, the public interest factors against disclosure outweigh the public interest factors in releasing this document.

***Not possible to release with deletions – Section 22 of the FOI Act***

For the reasons outlined above and given the nature of the document, it is not reasonably practical to make a copy of this document that would not be an exempt document.

**REVIEW OF DECISION**

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

In the event that you are dissatisfied with the decision:

1. You may within 60 days after the day on which you have been notified of this decision, 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.
2. You may 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 faithfully

**Peter Witham**

(Authorised internal-reviewer under subsection 54(1) of the FOI Act)  
for the Australian Securities and Investments Commission



28 June 2012

**Schedule of Documents**

No	Date of document	Description of document	No of folios	Original decision on access	Original decision relevant section/s	Review decision on access	Review decision relevant sections/
1	29/11/2010	ASIC Internal Organisational Search	5	Exempt	47E(d) 47F	Exempt	37(2)(b) 47E(d) 47F
2	26/11/2010	Infoline Enquiry: File note	3	Edited copy released		Not applicable	
3	29/11/2010	Acknowledgement letter sent to Mr [REDACTED]	1	Released		Not applicable	
4		Product Disclosure Statement	4	Released		Not applicable	
5	28/01/2011	Correspondence sent by ASIC to third party	2	Exempt	47E(d) 47G(1)(b)	Exempt	47E(d) 47F 47G(1)(a)
6	02/02/2011	Correspondence received by ASIC from third party	2	Exempt	47G(1)(b)	Exempt	47E(d) 47F 47G(1)(a)&(b)
7	07/02/2011	ASIC Internal Assessment of Regulatory Issues – Activity Number [REDACTED]	5	Exempt	47C 47E(d)	Exempt	37(2)(b) 47C 47E(d) 47F 47G(1)(a)&(b)
8	14/02/2011	Letter to Mr [REDACTED] from [REDACTED] ASIC	2	Released		Not applicable	

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[Redacted]

to:  
FOIrequest  
23/05/2013 11:01 AM  
Hide Details

From: [Redacted]

To: <FOIrequest@asic.gov.au>,  
History: This message has been forwarded.

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This email message has been processed by MIMESweeper

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Under the Freedom of Information Act I would like to apply for all documents relating to ASIC investigations into the companies [Redacted] This information can be sent to the above email address.

Your help regarding this matter is greatly appreciated.

Regards [Redacted]

[Redacted]

# Divider Tab No. 24

Our Reference: 10-40031



ASIC

Australian Securities & Investments Commission

30 May 2013

Commonwealth Bank Building  
240 Queen Street, Brisbane  
GPO Box 9827 Brisbane QLD 4001  
DX 322 Brisbane

Telephone: (07) 3867 4776  
Facsimile: (07) 3867 4725  
ASIC website: www.asic.gov.au

Sent by email: [REDACTED]

Dear [REDACTED]

**Freedom of Information Request – [REDACTED]**

**Notice to Identify Documents under section 24AB of the FOI Act**

I refer to your email of 23 May 2013 received by this office on 23 May 2013 seeking access to documents under the *Freedom of Information Act 1982 (FOI Act)*. Your request seeks "all documents relating to ASIC investigations into the companies [REDACTED]"

To be a valid request, the FOI Act specifies, amongst other things, that the request provide sufficient information to enable the documents to be identified. Section 15(2)(b) of the FOI Act states, as relevant, that a request for access to a document must "provide such information concerning the document as is reasonably necessary to enable a responsible officer of an agency... to identify it".

I advise that your request presently 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. As section 15(2)(b) has not been met ASIC may, in accordance with section 24(1)(b) of the 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:

1. Where you refer to documents relating to "ASIC investigations", please clarify whether you are seeking documents relating to a formal investigation commenced by ASIC under section 13 of the ASIC Act. Where you say "relating to", do you mean documents created, gathered and obtained as part of a formal ASIC investigation?
2. Please confirm which entity/ies your request relates to – ASIC's database records entries in relation to [REDACTED] (both incorporated in Australia) as well as [REDACTED] (incorporated in the USA).
3. In your email, you refer to "all documents". Please clarify by identifying the type or categories of documents you seek, for example, evidence gathered by ASIC from third parties during the investigation, internal ASIC correspondence or external correspondence between ASIC and third parties, or some other type of document.
4. Please also clarify, as clearly as possible, the categories or types of the documents you are looking for, what the documents relate to, the matters discussed in the documents, who the documents relate to or are between and date ranges of the

documents. For example, if you are seeking evidence, please identify the nature/category/type, subject matter and date/s of the documents you are seeking as well as the person/s or entity/ies that such documents relate to. If you are seeking correspondence, please identify the person/s, entity/ies or matters that the correspondence relates to, who the correspondence sought is intended to be between and what time periods you are seeking correspondence for. If you are seeking internal ASIC correspondence, please specify the matters that such correspondence relates to.

**Note:** The above comments are not exhaustive and any further clarification you can provide in respect of the documents you are seeking will assist to identify the relevant documents.

You should further note that ASIC is entitled to charge for time spent in searching for and retrieving relevant documents and decision-making. 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. Should any documents be available to you under the FOI Act, a photocopying fee is also payable in respect of each page provided. Narrowing the scope of your request may reduce the processing charges applicable to any clarified request you may wish to submit.

As a general rule, an application must be processed within 30 days. However, 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 (07) 3867 4782 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 letter.

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; or
- (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 letter your request will, in accordance with sections 24AB(6) and s24AB(7) of the Act, be taken to be withdrawn.

Yours faithfully

**Sam Peart**

Lawyer

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

For the Australian Securities and Investments Commission

Email: [sam.peart@asic.gov.au](mailto:sam.peart@asic.gov.au)

# Divider Tab No. 25



FOI Request - [REDACTED]  
Confidence: Legal (DLM=Sensitive)  
Sam Peart to: [REDACTED]

(Treat as In

24/06/2013 03:28 PM

Follow Up: Normal Priority.

Dear [REDACTED]

Referring to your email dated 13 June 2013 FOI request (see below) please find attached letter of today's date acknowledging your request.

I will be in contact in due course.

Regards

**Sam Peart** | Lawyer | Enforcement (Corporate Governance)

Australian Securities & Investments Commission | Level 21, 240 Queen Street, Brisbane QLD 4001 | Tel +61 7 3867 4782 | Fax +61 7 3867 4790 | [sam.peart@asic.gov.au](mailto:sam.peart@asic.gov.au)



20130624 ltr from ASIC to [REDACTED] re Acknowledgment of FOI request [REDACTED].pdf

From: [REDACTED]

To: <FOIrequest@asic.gov.au>

Date: 13/06/2013 01:11 PM

Subject: [REDACTED] FOI Request

\*\*\*

This email message has been processed by MIMESweeper

\*\*\*

Dear Mr Peart, under the Freedom of Information Act I would like to apply for the ASIC Enforcement Committee's Submissions and Reports relating to the Liquidation of both [REDACTED] [REDACTED]. This would also include the Enforcement Committee's final reports relating to the EX02 and EX03 forms submitted by the Liquidator [REDACTED] on behalf of Creditors for [REDACTED]. The investigations into both these companies were carried out by Skye Roberts and her associates, Brisbane branch of the Australian Securities Investment Commission.

I Thankyou for your help regarding this request.

Regards, [REDACTED]



# Divider Tab No. 26

Our Reference: 10-40031

3 July 2013

[REDACTED]  
Sent by email: [REDACTED]

Dear [REDACTED]

**Freedom of Information Request – Sky Shades Australia & Sky Shades Holdings**

**Request pursuant to 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 this office on 23 May 2013 in which you sought access to documents.

I sent you (by email as requested) a notice under section 24AB of the FOI Act dated 30 May 2013 (**the section 24AB Notice**) 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 the section 24AB Notice by email on 13 June 2013, containing a revised FOI request in which you sought access to the following documents:

- *"ASIC Enforcement Committee's Submissions and Reports relating to the Liquidation of both [REDACTED] This would also include the Enforcement Committees final reports relating to the EX02 and EX03 forms submitted by the Liquidator [REDACTED] on behalf of Creditors for [REDACTED] [REDACTED] The investigations into both these companies were carried out by Skye Roberts and her associates, Brisbane branch of the Australian Securities Investment Commission."*

I wrote to you (by email as requested) on 24 June 2013 informing you that your revised request constituted a valid application.

## **The Decision**

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

I have identified a document which comes within the terms of your request. It is listed in the Schedule to this letter.

## **Released documents**

I advise that I have decided to not release any documents.

## **Exempt documents**

I advise that I have decided not to release the document marked "Exempt" in the attached Schedule, under your request, on the grounds that the document is exempt from release for the following reasons:

### **Document No: 1**

#### **Exempted under section 37(1)(a) and 47C of the FOI Act**

#### **Section 37(1)(a)- Documents affecting enforcement of law & protection of public safety**

Section 37(1)(a) of the FOI Act states:

*"A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance."*

#### **Section 47C – Public interest conditional exemption – deliberative processes**

Section 47C of the FOI Act states:

*"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 an agency."*

## **Public interest**

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. We note that there is no public interest requirement in respect of exemptions under s37(1)(a) of the FOI Act.

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

In particular, I have had regard to the following factors outlined in section 11B(3) as being factors favouring access to the documents 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 find that the adverse effects on ASIC's law enforcement as outlined are outweighed by any public benefit that lies in disclosure of the documents.

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

I do not find that disclosure of the document would inform debate on a matter of public importance.

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

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

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

I do not find that disclosure of the document would allow you to access your personal information.

Accordingly, I do not find that any of the above factors favour access to the document in the public interest. In addition, I find that release of the document would be contrary to public interest as it could reasonably be expected to prejudice the conduct of an investigation or law enforcement by ASIC.

It is my view therefore, that disclosure of the document would, on balance, be contrary to public interest. Accordingly, I find that the document is exempt from release under s47C of the FOI Act.

### **Final Assessment of Charges**

The FOI Act provides that charges may be assessed for time spent processing your request.

There are no charges applicable to the processing of your request in this instance.

### **Review Rights**

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

In the event that 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 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 GPO Box 5218 Sydney NSW 2001.

Yours faithfully,

**Sam Peart**

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

Email: [sam.peart@asic.gov.au](mailto:sam.peart@asic.gov.au)

**Schedule of Documents****FOI Request**

No	Date	Description of document	No of pages	Decision on access	Relevant section
1	22 May 2013	Internal Memorandum from Michael Keily to Simon Temple; cc: Kelly Rodgers	1	Exempt	37(1)(a) 47C

# Divider Tab No. 27

17 January 2012

**LEGAL PRIVILEGE**

The Proper Officer  
Freedom of Information Unit  
Australian Securities &  
Investments Commission  
GPO Box 9827  
Sydney NSW 2001

Dear Sir or Madam,

**RE: Request access to documents under the Freedom of Information Act 1982 (FOI REQUEST)**

In reliance upon the Freedom of Information Act 1982 (the Act), I hereby request access to the following documents ASIC is holding about myself:

**PARTICULARS OF REQUEST**

1. For the period between 1 January 2006 to 31 December 2011, in relation to [REDACTED], previously resided at [REDACTED]
  - a. all correspondence howsoever called, with the Australian Financial Transaction Reports and Analysis Centre (AUSTRAC), the Australian Federal Police (AFP), Australian Customs Services (ACS) and the Department of Immigration and Citizenship;

**SECTION 30A REMITTANCE**

In accordance with section 30A of the Act, I hereby request the remittance of all fees for this FOI Request, due to financial hardship caused by my current incarceration at the Wellington Correctional Centre.

▶ ▲ ◀

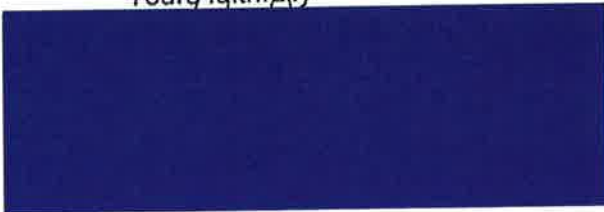
Po Box 386 Wellington NSW 2820



I would be much obliged if the requested information could be mailed to me, at the below addressed, clearly marked "LEGAL PRIVILEGED MATERIAL".

Should you require clarification with my request, or require any further details, please do not hesitate to write to me.

Yours faithfully



# Divider Tab No. 28



**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

Our Ref: ENF2012-2160

22 March 2012



C/- Wellington Correctional Centre  
PO Box 386  
Wellington NSW 2820

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 this office on 17 January 2012 in which you sought access to correspondence, in relation to yourself, between ASIC and the Australian Financial Transaction Reports and Analysis Centre (AUSTRAC), the Australian Federal Police (AFP), Australian Customs Services (ASC), Department of Immigration and Citizenship (DIAC) and the NSW Department of Corrective Services (DCS).

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

I have identified documents as coming within the terms of your request. These are listed in the Schedule to this letter.

**Released Documents**

I advise that I have decided to release the documents marked "Release" on the attached Schedule, under your request.

**Exempt document**

I advise that I have decided not to release the document marked "Exempt", being Document 12, on the attached Schedule, under your request, on the grounds that the document is exempt from release for the following reasons:

Document 12

Document 12 is an email from ASIC to AUSTRAC dated 2 January 2007. I am satisfied that Document 12 is exempt under sections 37(2) (b), 47C (1) (a) and 47F of the FOI Act.

1. Section 37(2)(b) - Documents affecting enforcement of law and protection of public safety

I am satisfied that Document 12 could reasonably be expected to disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures for the following reasons:

- such information is not publicly available or well known;
- authoritative knowledge of the methods used would assist endeavours to evade them.

2. Section 47C(1)(a) - Public interest conditional exemptions-deliberative processes

I am satisfied Document 12 contains deliberative material relating to an opinion prepared in the course of deliberative processes involved in the functions of the agency.

I considered the public interest test and considered that the release could reasonably be expected to prejudice the efficient and effective conduct of the agency's functions by disclosing the agency's strategies. In these circumstances, it appears that on balance, it would be contrary to the public interest.

3. Section 47F - Public interest conditional exemptions – personal privacy

I am satisfied that the document contains personal information as defined in section 4(1) of the FOI Act, in that the individual's identity is apparent or reasonably ascertainable and conveys something about a person, rather than just identifying them.

Disclosure of this information is likely to be unreasonable as:

- this information is not publicly available or well known;
- it is likely that the persons concerned would not wish to have this information disclosed without consent;
- there does not appear to be a public purpose that could be achieved through the release; and
- information was obtained using information gathering powers.

### **Conditionally Exempt Documents**

I advise that I have decided to release the documents marked "Conditionally Exempt" on the attached Schedule under your request.

Documents 2-11 inclusive, 27, 28, 33, 38, 39, 40, 43, 44, 47, 48, and 50-55 inclusive

I am satisfied that Documents 2-11 inclusive, 27, 28, 33, 38, 39, 40, 43, 44, 47, 48, and 50-54 inclusive are conditionally exempt under section 47F of the FOI Act.

1. Section 47F - Public interest conditional exemptions – personal privacy

The documents referred to above reveal the personal details of a number of individuals. These details include details of their names and addresses.

I am satisfied that this information is personal information as defined in section 4(1) of the FOI Act, in that the individual's identity is apparent or reasonably ascertainable and conveys something about a person, rather than just identifying them.

Disclosure of this personal information is likely to be unreasonable as:

- this information is not publicly available or well known;
- it is likely that the persons concerned would not wish to have this information disclosed without consent;
- there does not appear to be a public purpose that could be achieved through the release; and
- information was obtained using information gathering powers.

I have considered the public interest test. Releasing personal information in relation to third parties is unlikely to contribute to the promotion of any of the four factors in s 11B(3) but is likely to unreasonably affect the personal privacy of those third parties. Thus, on balance such information would be contrary to the public interest and is redacted.

The documents are released with all personal information of any third parties redacted.

Document 56

Document 56 is a referral to the AFP dated 24 January 2007. I am satisfied that Document 56 is conditionally exempt under sections 47C (1) (a) and 47F of the FOI Act.

1. Section 47C(1)(a) - Public interest conditional exemptions-deliberative processes

I am satisfied Document 56 contains deliberative material relating to an opinion prepared in the course of deliberative processes involved in the functions of the agency.

The document will be released but with the exempted parts redacted.

2. Section 47F - Public interest conditional exemptions – personal privacy

I am satisfied that the document contains personal information as defined in section 4(1) of the FOI Act, in that the individual's identity is apparent or reasonably ascertainable and conveys something about a person, rather than just identifying them.

I have considered the public interest test. Releasing the personal information of third parties is unlikely to contribute to the promotion of any of the four factors in s 11B (3) but is likely to unreasonably affect the personal privacy of those third parties. Thus, on balance such information would be contrary to the public interest.

The documents are released but the exempted parts are redacted.

### **Fee and Charges in Processing the Request**

Section 29 of the FOI Act provides for charges to be assessed for time spent processing a request. Having taken into consideration your personal financial circumstances, I have decided not to impose any charges for processing your request in this instance.

### **Reasons and other particulars of decisions to be given**

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

In the event that 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 for a review of my decision under section 54 of the FOI Act. An application fee of \$40.00 is required.
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 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 faithfully

Melanie Baxter  
(Authorised decision-maker under subsection 23(1) of the FOI Act) for ASIC  
Senior Lawyer  
FS1-Deterrence

## Schedule of Documents

No	Description of Document	Date	No of Pages	Decision	Relevant Section
1	AUSTRAC SCTR Report [REDACTED]	10 November 2006	2	Release	11A(3)
2	AUSTRAC IFTI Report [REDACTED]	10 November 2006	2	Conditionally Exempt	47F
3	AUSTRAC IFTI Report [REDACTED]	10 November 2006	2	Conditionally Exempt	47F
4	AUSTRAC IFTI Report [REDACTED]	10 November 2006	2	Conditionally Exempt	47F
5	AUSTRAC IFTI Report [REDACTED]	10 November 2006	2	Conditionally Exempt	47F
6	AUSTRAC IFTI Report [REDACTED]	10 November 2006	2	Conditionally Exempt	47F
7	AUSTRAC IFTI Report [REDACTED]	02 February 2012	1	Conditionally Exempt	47F
8	AUSTRAC IFTI Report [REDACTED]	02 February 2012	1	Conditionally Exempt	47F
9	AUSTRAC IFTI Report [REDACTED]	02 February 2012	1	Conditionally Exempt	47F
10	Email from AUSTRAC to ASIC	14 November 2006	2	Conditionally Exempt	47F
11	Email from AUSTRAC to ASIC	15 November 2006	2	Conditionally Exempt	47F
12	Email from ASIC to AUSTRAC	02 January 2007	25	Exempt	37(2)(b), 47C(1)(a), 47F
13	Email from DIAC to ASIC	24 November 2006	4	Release	11A(3)
14	Email from DIAC to ASIC	24 November 2006	4	Release	11A(3)
15	Email from DIAC to ASIC	08 December 2006	4	Release	11A(3)
16	Email from DIAC to ASIC	21 December 2006	2	Release	11A(3)
17	Email from DIAC to ASIC	22 January 2007	2	Release	11A(3)
18	Email from DIAC to ASIC	24 January 2007	7	Release	11A(3)
19	Email from DIAC to ASIC	01 March 2007	3	Release	11A(3)
20	Email from ASIC to DIAC	05 October 2007	3	Release	11A(3)
21	Email from DIAC to ASIC	29 January 2009	3	Release	11A(3)
22	Email from DIAC to ASIC	14 July 2009	5	Release	11A(3)

23	Email from ASIC to DIAC	17 July 2009	6	Release	11A(3)
24	Email from DIAC to ASIC	21 July 2009	2	Release	11A(3)
25	Letter to ASIC from AFP	16 January 2007	1	Release	11A(3)
26	Fax to AFP from ASIC	15 February 2007	2	Release	11A(3)
27	Fax to AFP from ASIC	20 February 2007	4	Conditionally Exempt	11A(3)
28	Email to ASIC from AFP	20 February 2007	1	Conditionally Exempt	11A(3)
29	Fax to AFP from ASIC	05 March 2007	3	Release	11A(3)
30	Email to ASIC from AFP	05 March 2007	1	Release	11A(3)
31	Email from ASIC to ASIC Intelligence Analyst	07 March 2007	1	Release	11A(3)
32	Email to ASIC from AFP	08 March 2007	2	Release	11A(3)
33	Email to ASIC from AFP	24 April 2007	2	Conditionally Exempt	47F
34	Fax to AFP from ASIC	15 May 2007	2	Release	11A(3)
35	Fax to AFP from ASIC	16 May 2007	2	Release	11A(3)
36	Email to ASIC from AFP	24 May 2007	1	Release	11A(3)
37	Fax to ASIC from AFP	24 May 2007	3	Release	11A(3)
38	Email to AFP from ASIC	09 July 2007	2	Conditionally Exempt	47F
39	Email to ASIC from AFP	09 July 2007	1	Conditionally Exempt	47F
40	Email to ASIC from AFP	22 October 2007	3	Conditionally Exempt	47F
41	Email to AFP from ASIC	19 November 2007	3	Release	11A(3)
42	Email to ASIC from AFP	22 November 2007	5	Release	11A(3)
43	Email to ASIC from AFP	16 December 2007	2	Conditionally Exempt	47F
44	Email to ASIC from AFP	21 May 2008	2	Conditionally Exempt	47F
45	Email to ASIC from AFP	13 November 2008	1	Release	11A(3)
46	Email to ASIC from AFP	23 January 2009	2	Release	11A(3)



47	Email to ASIC from AFP	24 June 2009	2	Conditionally Exempt	47F
48	Email to AFP from ASIC	26 November 2009	2	Conditionally Exempt	47F
49	Email to AFP from ASIC	09 December 2009	2	Release	11A(3)
50	Email from ASIC to Interpol Canberra	04 January 2007	2	Conditionally Exempt	47F
51	Email from ASIC to Interpol Canberra	25 January 2007	3	Conditionally Exempt	47F
52	Email from ASIC to Interpol Canberra	19 February 2007	4	Conditionally Exempt	47F
53	Email from ASIC to Interpol, Canberra	08 June 2007	4	Conditionally Exempt	47F
54	Email from ASIC to Interpol, Canberra	28 June 2007	1	Conditionally Exempt	47F
55	Email from ASIC to AFP	13 February 2007	1	Release	11A(3)
56	Referral to the AFP	24 January 2007	6	Conditionally Exempt	47C(1)(a), 47F
57	AFP Case note: Call from David Watson	08 February 2007	1	Release	11A(3)
58	AFP Case note: Email from ASIC	13 February 2007	1	Release	11A(3)

## Relevant Sections of the FOI Act

### Section 4 (1)

'Personal Information' is defined in section 4(1) of the FOI Act to mean "*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 first requirement is that to be personal information the information must relate to an individual. The second requirement is that the information says something about an individual, which means that it must convey some information about the person.

The third requirement is that the individual be identified in the information or is reasonably able to be identified. This inquiry is not restricted to the actual information in the document and includes other information known more widely about the individual which would allow it to be accepted that the information in the document is about that individual. This includes other information in the public arena about the individual which would allow it to be concluded that the information in the document is about that individual.

### Section 8A

*Information to be published--what is operational information?*

- (1) An agency's *operational information* is information held by the agency to assist the agency to perform or exercise the agency's functions or powers in making decisions or recommendations affecting members of the public (or any particular person or entity, or class of persons or entities).

Example: The agency's rules, guidelines, practices and precedents relating to those decisions and recommendations.

- (2) An agency's *operational information* does not include information that is available to members of the public otherwise than by being published by (or on behalf of) the agency.

### Section 11A (3)

*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.

### Section 11A (5)

*Access to documents on request*

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.

## Section 11B

### *Public interest exemptions--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 document in the public interest include whether access to the document would do any of the following:
  - (a) promote the objects of this 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.

## Section 26

### *Reasons and other particulars of decisions to be given*

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
  - state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
  - (aa) in the case of a decision to refuse to give access to a conditionally exempt document--include in those reasons the public interest factors taken into account in making the decision; and

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

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
- (c) give to the applicant appropriate information concerning:

- (i) his or her rights with respect to review of the decision;
- (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
- (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii);

including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.

### **Section 37(2) (b)**

#### *Documents affecting enforcement of law and protection of public safety*

- (1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
  - (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;
  - (b) 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; or
  - (c) endanger the life or physical safety of any person.
- (2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
  - (a) prejudice the fair trial of a person or the impartial adjudication of a particular case;
  - (b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
  - (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

### **Section 47 C (1) (a)**

#### *Public interest conditional exemptions--deliberative processes*

##### 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.

#### **Section 47 F**

##### *Public interest conditional exemptions--personal privacy*

Section 47F of the FOI Act provides:

- “(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency ... must have regard to the following matters:
- (a) the extent to which the information is well known;
  - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency... considers relevant.”

# Divider Tab No. 29




25 February 2013

BY EMAIL: FOIrequest@asic.gov.au

The Senior Manager  
Administrative Law Team  
Australian Securities & Investments Commission  
GPO Box 9827  
SYDNEY NSW 2001

To the Senior Manager

Application for Freedom of Information Request regarding documentation relevant to the complaint  
by 


**1 Background**

We refer to our complaint lodged by  with the Australian Securities and Investment Commission (ASIC) on 26 October 2011 (the Complaint). The Complaint related to conduct by the 


On 11 July 2012 ASIC referred the Complaint, with our consent, to the Australian Prudential Regulation Authority (APRA) for further consideration (the Referral).

**2 Freedom of Information Request**

In accordance with section 11(1) of the *Freedom of Information Act 1982* (Cth) we seek access to copies of the following documents:

- any internal memoranda;
- email correspondence;
- internal emails or correspondence;
- written correspondence with other parties, such as APRA or 
- file notes;
- briefing notes; and
- meeting notes

that relate to or were created in connection with the investigation, consideration of and conclusions reached in relation to the Complaint or the Referral.



Notices under the FOI Act may be provided to me by email at: [REDACTED] or by post to:

[REDACTED]

If you require any additional information in relation to the types of documents we are seeking, please do not hesitate to contact me on the details below.

Kind regards

[REDACTED]



# Divider Tab No. 30

Our Ref: 9038/13  
PCS 2013/4753



ASIC

Australian Securities & Investments Commission

27 March 2013

Level 24, 120 Collins Street  
Melbourne VIC 3000  
GPO Box 9827 Melbourne VIC 3001

Telephone: (03) 9280 3100  
Facsimile: (03) 9280 3444  
ASIC website: [www.asic.gov.au](http://www.asic.gov.au)

By post and email: [REDACTED]

Dear [REDACTED]

**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 this office on 25 February 2013 in which you sought access to the following concerning your report of misconduct lodged with ASIC on October 2011:

- *Any internal memoranda;*
- *Email correspondence;*
- *Internal emails or correspondence;*
- *Written correspondence with other parties, such as APRA or [REDACTED]*
- *File notes;*
- *Briefing notes; and*
- *Meeting notes*

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

I have identified the documents which come within the terms of your request. These are listed in the Schedule to this letter.

I have not included copies of sections 10 and 11 of the *Insurance Act 1973* which were located as part of the document search as they are publicly available.

As discussed today, I have also not included copies of documents printed directly from the database. This is because the content of the documents is the same as those that appeared on the hard copy file, although the documents would not considered duplicates when printed.

If you would like for these documents to be considered, please contact me to discuss.

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### **Decision**

I advise that I have decided to release the documents marked "Release" on the attached Schedule. The released documents are documents 1, 3, 6, 7, 11, 3, 14, 15, 17, 21, 22, 23, 26, 27 and 28. A copy of these documents is provided with this letter.

I advise that I have decided not to release the documents marked "Exempt" in the attached Schedule, on the grounds that the documents are exempt from release for the reasons set out in this letter.

Documents 2, 4, 5, 8 and 9 are exempt under subsection 37(2)(b) of the FOI Act.

### **Section 37(2)(b) — Documents affecting enforcement of law and protection of public safety**

Subsection 37(2)(b) provides:

A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures.

Document 2 is an internal Misconduct & Breach Reporting document.

Documents 4 and 5 are internal ASIC database searches.

Document 8 is the assessment of your report of misconduct.

Document 9 is the referral to a specialist team.

These documents contain details of the intelligence held by ASIC. The release of the information would prejudice the effectiveness of methods and procedures. ASIC discloses that it gathers intelligence, and it is therefore well known that internal documents and databases exist, however the extent of that intelligence, how it is gathered, how it is able to be accessed, printed and analysed for purposes of assessing reports of misconduct is not widely known. The disclosure of internal searches conducted would compromise the effectiveness of ASIC methods and procedures.

Reports of misconduct from the public are an important part of ASIC's intelligence gathering function. In assessing reports of misconduct, standard methods and procedures are used.

The release of the assessment would show the assessment procedure that ASIC applies to reports of misconduct and would list the specific criteria and priorities that ASIC uses to determine whether to take action. If the general public becomes aware of ASIC methods and procedures used for preventing, detecting, investigating or dealing with breaches or evasions of the law, those methods and procedures will no longer be effective. The release of the assessment would provide forewarning of the considerations used by ASIC to assess reports of misconduct and of ASIC's regulatory response.

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Documents 8 and 10 are exempt under section 47C of the FOI Act.

**Section 47C — Public interest conditional exemptions—deliberative processes**

Section 47C provides:

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 an agency

Document 8 is the assessment of your report of misconduct.

Documents 10 is an internal ASIC email chain.

The deliberative process is ASIC's thinking process. The disclosure of the assessment would disclose opinions, consultations, recommendations and deliberations which have taken place during the assessment procedure and were applied to the report of misconduct. The disclosure would be likely to hinder the capacity of ASIC to fully and properly consider reports of misconduct and the advice of senior specialists.

The internal email chains also consider options available. Although in this instance you are aware that the matter was referred to APRA, I have determined that the processes and deliberations before reaching this conclusion are part of ASIC's deliberative processes.

This exemption is subject to the public interest test.

Documents 2, 4, 5, 8, 9, 10, 12, 16, 18, 19, 20, 24 and 25 are exempt under section 47E of the FOI Act.

The documents not already referred to consist of communications between ASIC officers either internally or ASIC officers and APRA.

**Section 47E(d) — Public interest conditional exemptions—certain operations of agencies**

Subsection 47E(d) provides that a document is conditionally exempt if its disclosure under this 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.

The disclosure of the assessment procedure would have a substantial adverse effect on the proper and efficient conduct of the operations of ASIC because it would provide details of the confidential considerations used by ASIC to assess reports of misconduct and of ASIC's regulatory response. Confidential methodology used by ASIC should not be made public as such information could assist persons to circumvent regulatory detection and action.

The remaining documents are either internal ASIC emails or communications between ASIC officers and APRA. Although your consent was obtained to release information to APRA and there was a legislative basis for doing so, I have determined that the disclosure of this information would have a substantial adverse affect on ASIC's operations. This is because it would provide forewarning to third parties about factors considered by ASIC prior to

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referring matters to a specialist team or to another agency. If third parties become aware of those factors, ASIC's operations will be prejudiced. ASIC relies heavily on information from the public and from other government departments. If those information sources become restricted, or if information is tailored in a particular way, ASIC's operations will be adversely affected.

### **Public interest**

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.

The information contained in the documents relates to the assessment of your report of misconduct. I do not consider that the information contained in the documents would inform debate on a matter of public importance.

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

As the report of misconduct was submitted by a company, about another company, the documents do not allow a person to access their personal information.

I find that, on balance, disclosure of the conditionally exempt documents would be contrary to the public interest. I find, therefore, that these documents are exempt from release under section 47C and 47E(d) of the FOI Act, in addition to the exemption under section 37(2)(b).

### **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

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- 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 assessment with deletions so that the documents would no longer be exempt. I am of the view that such deletions would be so extensive that the exempt document would either be misleading or unintelligible. I am therefore satisfied that it is not practical to edit the documents for part release.

A copy of the released documentation is attached to this letter. I have decided to waive the access charges.

### **FOI Disclosure Log**

I note for your information, that Section 11C of the FOI Act requires ASIC to publish on our public website, copies of any documents which may ultimately be released to you, with the exception of personal information about any person, or information pertaining to the business, commercial or financial of any organisation or information pertaining to the business or professional affairs of any person, where it would be unreasonable to publish that information or documents in respect to which, the necessary modifications to the document to be released would make the release of the remainder of the document impractical. You are referred to the terms of section 11C.

### **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](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 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

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Yours sincerely

**Fiona Crowe**

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

**For the Australian Securities and Investments Commission**

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**Schedule of Documents**

No	Description of document	Date	No of folios	Decision on access	Relevant section
1	Email chain relating to registration of your report of misconduct	26/10/2011	2	Release	
2	Misconduct & Breach Reporting Initial Assessment Form	undated	1	Exempt	37(2)(b), 47E(d)
3	ASIC letter to [REDACTED]	28/10/2011		Release	
4	ASIC Internal database search	28/10/2011	36	Exempt	37(2)(b), 47E(d)
5	ASIC Internal database search	28/10/2011	7	Exempt	37(2)(b), 47E(d)
6	Print screens of ASIC Australian Financial Services authorised representatives register	15/11/2011	4	Release	
7	Frequently asked questions – Are roadside assistance services provided by automobile associations financial products?	17/11/2011	1	Release	
8	Misconduct & Breach Reporting assessment of your report of misconduct	21/11/2011	7	Exempt	37(2)(b), 47C,, 47E(d)
9	Misconduct & Breach Reporting referral to a specialist team	22/11/2011	1	Exempt	37(2)(b), 47E(d)
10	Email chain between ASIC officers	7/12/2011	1	Exempt	47C, 47E(d)
11	Email chain between ASIC officers	7/12/2011	1	Release	
12	ASIC letter to APRA (unsigned)	8/12/2011	2	Exempt	47E(d)
13	Internal ASIC email	8/12/2011	1	Release	
14	Internal ASIC email chain	8/12/2011	1	Release	
15	Internal ASIC email chain	21/3/2012	1	Release	
16	Email chain	21/3/2012	3	Exempt	47E(d)
17	Internal ASIC email	23/3/2012	1	Release	



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18	Email chain between ASIC and APRA	27/3/2012	3	Exempt	47E(d)
19	Email chain between ASIC and APRA	27/3/2012	2	Exempt	47E(d)
20	Email chain between ASIC and APRA	8/6/2012	2	Exempt	47E(d)
21	Internal ASIC Email	5/6/2012	1	Release	
22	Letter from [REDACTED]	19/6/2012	1	Release	
23	Email from [REDACTED] to ASIC	19/6/2012	1	Release	
24	ASIC letter to APRA (unsigned)	8/12/2011	2	Exempt	47E(d)
25	Email chain	8/12/2011	2	Exempt	47E(d)
26	ASIC letter to [REDACTED]	11/7/2012	1	Release	
27	Email chain	12/7/2012	2	Release	
28	Email chain	8/8/2012	1	Release	