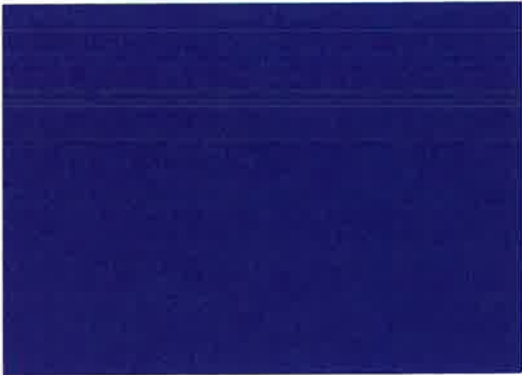


Divider Tab No. 31



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

29th November 2012

Dear Sir,

In or around January 2006 ASIC seized a file containing my personal financial information, including my tax records, during your seizure of [redacted] records. The file was clearly labeled [redacted]

I have on three occasions asked for the return of my file so that I am able to accurately complete my taxation returns. On the first occasion I made the request to ASIC in a letter. I did not receive a reply to my letter.

On the second occasion I made the request directly to ASIC officer Mr Oliver Kohler who said that he would return the file if I co-operated with ASIC's investigation. I consider that I have co-operated with the investigation in every way, however the file was not returned.

On the third occasion the request was made directly to Mr Angus Dale-Jones. Mr Dale-Jones had a long and detailed conversation with me that made it clear that my file was of absolutely no consequence to the investigation, and in fact that the investigation had been completed. Mr Dale-Jones left ASIC shortly after this conversation and the file has not been returned.

Given that the entire investigation of [redacted] has been concluded, and it is some four years since the charges were laid against me and withdrawn, there is no possible reason why ASIC should retain my personal file. I request that you immediately return the file to me, or in the event that ASIC maintains the right to retain the file, provide a copy of the papers in the file to me.

Further I make the following request under the Freedom of Information Act on the basis of public interest as I have grave concerns that ASIC acted either

illegally or outside of its powers in first seizing my personal files, then refusing to return them to me or give me access to them, or to provide copies of them, and then in subsequently charging me without basis.

Please provide me with copies of the following documents in relation to the seizure of my file and the charge that ASIC laid and subsequently withdrew against me:

1. The warrant relating to the seizure of the file from [REDACTED]
2. The affidavits provided to the Court by ASIC in relation to gaining the warrant.
3. Any documents including file notes relating to the charge that was laid by ASIC against me and subsequently withdraw including those documents recording the consideration of the decision to charge me, including but not limited to:
 - (a) the list of documents ASIC seized from [REDACTED] in November or December 2005
 - (b) the list of documents ASIC seized or copied during a night-time raid on the offices of [REDACTED] in or around May 2006.
 - (c) All documents including file notes and hand written notes regarding the decision to charge me.
 - (d) All documents including file notes relating to why ASIC retained the file despite my repeated requests for its return.

Yours sincerely,

[REDACTED]

Divider Tab No. 32



ASIC

Australian Securities & Investments Commission

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

Telephone: (03) 9280 3200
Facsimile: (03) 9280 3444

Our Reference: 56137/12

18 January 2013

By 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 29 November 2012 in which you sought access to the following documents:

- "1. *The warrant relating to the seizure of the file from [REDACTED]*
2. *The affidavits provided to the Court by ASIC in relation to gaining the warrant.*
3. *Any documents including file notes relating to the charge that was laid by ASIC against me and subsequently withdraw including those documents recording the consideration of the decision to charge me, including but not limited to:*
 - (a) *the list of documents ASIC seized from [REDACTED] in November or December 2005*
 - (b) *the list of documents ASIC seized or copied during a night-time raid on the offices of [REDACTED] in or around May 2006.*
 - (c) *All documents including file notes and hand written notes regarding the decision to charge me.*
 - (d) *All documents including file notes relating to why ASIC retained the file despite my repeated requests for its return."*

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

I note that your letter also included a general request for the return of a file marked [REDACTED]

Your request for ASIC to return the file

As discussed yesterday, I advise that searches for a file named [REDACTED] were conducted and no file with that title was located.

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A file titled [REDACTED] has been identified and it does not match the description of the file in your letter. This file has contents that are dated no later than 2003 and the documents are not all financial and taxation records. The file contains the following:

- Letters to you from [REDACTED]
- Letters to you from [REDACTED]
- How to write a financial plan and financial analysis
- [REDACTED] documents
- Draft media releases relating to [REDACTED]

If the [REDACTED] file is the file that you are referring to, please contact me on 9280 3382 or email fiona.crowe@asic.gov.au

Your letter referred to contacting Mr Oliver Kohler and Mr Angus Dale-Jones. I am advised by Mr Kohler that he does not recall seeing a file marked [REDACTED] speaking to you about this file, or receiving a written request for it from you.

I can also confirm that Mr Angus Dale-Jones no longer works at ASIC, as you are aware. Although Mr Dale-Jones no longer works at ASIC, enquiries have also been made with his assistants who could not recall this matter. I also advise that searches of Mr Dale-Jones emails have been conducted and no records relating to you were located.

Your FOI request

I have conducted a search in response to the FOI request. I have interpreted references in your request for "my file" as a reference to the [REDACTED]

Parts 1 and 2 of your request

Parts 1 and 2 are framed as relating to a warrant and affidavits prepared to obtain a warrant. I advise that no documentation exists as described in parts 1 and 2 of your request. This is because the material that was produced to ASIC was not produced under a warrant, but, instead, produced under notice. The ASIC Act provides ASIC with the power for documents to be produced under notice.

ASIC's power to inspect and compel production of documents is different from the power to apply for and execute a search warrant.

I can confirm that no warrant was obtained by ASIC and therefore as no documents exist for parts 1 and 2 of your request, this information is refused under section 24A of the Act.

Section 24A - Requests may be refused if documents cannot be found, do not exist or have not been received

Section 24A states:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:

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- (i) is in the agency's or Minister's possession but cannot be found; or
- (ii) does not exist.

Part 3 – documents relating to the charges and withdrawal of charges

I have interpreted part 3 of your request as a request for documents that record the decision to charge you and the decision to withdraw the charges. This includes the actual charges and documents where the withdrawal of those charges is mentioned.

The decision to investigate was by way of a referral to a specialist team within ASIC. I have included this documentation as relevant to the decision to charge you.

I have identified 13 documents referred to in the attached schedule. This information is also covered by Part 3(c) of your request.

Parts 3(a) and 3(b)

Parts 3(a) and 3(b) of your request is for lists of documents purportedly seized by ASIC. As no warrant exists, no documents were 'seized' by ASIC.

Part 3(b) refers to documents seized or copied during a purported night time raid in or around May 2006. I am advised that ASIC investigators involved in the [REDACTED] investigation are unaware of any such raid occurring.

A number of notices were served on [REDACTED]. As part 3 of your request is for documents recording the decision to charge and withdraw the charge, I have interpreted this part of your request as a list of all documents produced under notices served between November and December 2005 and May 2006, which were considered in relation to the decision to charge you.

This would involve creating a list for you and I provide the following information about creating a list of the relevant documents produced under notice.

There is a substantial list of documents produced under notice to ASIC stored in an internal ASIC database. The right to access under the FOI Act is to existing documents, rather than to information. However, where a document can be produced from an electronic record, it will also fall within the terms of the FOI Act. Subsection 17(1) provides that where ASIC could produce a written document containing the information in a discrete form by using a computer, the request is to be dealt with as if it were a request for access to a written document containing that information.

That being said, subsection 17(2) provides that an agency is not required to comply with this provision if to do so would substantially and unreasonably divert ASIC's resources from its other operations.

I am satisfied that the production of a list of documents produced under notice to ASIC from the internal database would substantially and unreasonably divert ASIC's resources from its other operations. I am advised that in order to produce a list of documents by the dates you have mentioned would involve searching for the dates at which the notices were issued or around the time frames specified. The information would then need to be manually checked to

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respond to the actual terms of your request. I am advised that it would take many hours to analyse the lists specifically addressing parts 3(a) and 3(b) of your request.

I have also taken into consideration the work involved in assessing and editing the list for release. The list would provide document descriptions and in some instances, it may not be appropriate to disclose to you and confirm what documents were provided to ASIC under the notice provisions. This is because the list of documents that you have requested do not relate solely to you and there are still matters before the courts and ongoing operational issues which would need to be considered. The effect of this is that an Analyst within ASIC and resources from the ASIC Enforcement Team would be needed to check the document description of the documents and provide advice on the disclosure of the list.

This would substantially and unreasonably divert the resources of ASIC staff from its operations of investigating and prosecuting.

I am therefore satisfied that ASIC is not required to create the list of documents from an electronic record in response to your FOI request.

Part 3(c) – all documents including file notes and hand written notes regarding the decision to charge me

I have identified 13 documents relating to the decision to charge and withdrawal of charges. These documents are identified in the attached schedule.

Part 3(d) – all documents including file notes relating to why ASIC retained the file despite my repeated requests for its return.

I have not located documents relevant to part 3(d) of your request. In this regard, I note that you have nominated Oliver Kohler and Angus Dale-Jones in your letter as having knowledge of the request for the return of your file. As stated earlier, the searches conducted have not located a file titled [REDACTED] or requests for the return of a file. I have not located documentation falling within the terms of part 3(d) of your request and I refer you to section 24A of the FOI Act, as previously cited.

Decision

As documents were only identified for part 3(c) of your request, I advise that I have decided to release the documents marked "Release" on the attached Schedule.

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

Section 37 – Documents affecting enforcement of law and protection of public safety

Documents 12 and 13 are exempt under paragraph 37(2)(b), which states:

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

(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

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which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures;

I am also satisfied that the disclosure would disclose ASIC methods and procedures for investigating or dealing with matters arising out of alleged breaches or evasions of the law. While the existence of charges being approved and later withdrawn is of no 'surprise', the methods and procedures applied by ASIC in determining to take action, or withdraw action, is not a matter that is widely known. The release of this type of information would prejudice the effectiveness of those procedures for dealing with matters arising out of alleged breaches of the law. This is because the disclosure of the information ASIC considers when deciding the types of matters it will action further, or decide to cease actioning, would allow certain persons to evade enforcement and avoid scrutiny.

Section 42 - Documents subject to legal professional privilege

Documents 4, 5, 6, and 7 are exempt under section 42 of the FOI Act, which states:

- (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

The information contains confidential legal advice sought and provided to ASIC and legal professional privilege arises.

I have considered the following elements of legal professional privilege:

- whether there is a legal adviser-client relationship
- whether the communication was for the purpose of giving or receiving legal advice or for use or in connection with actual or anticipated litigation
- whether the advice given is independent
- whether the advice given is confidential

I am satisfied that a lawyer-client relationship exists between ASIC and the legal adviser and confidential legal advice was provided.

The dominant purpose of the documents was either obtaining or the giving of legal advice for the purposes of your charges.

Section 47C – Public interest conditional exemptions—deliberative processes

Documents 3, 5, 6, 7, 9, 10, 11, 12, and 13 are also exempt under section 47C of the FOI Act.

This section 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:

- (a) an agency;

The deliberative process is ASIC's thinking process. I acknowledge that you are aware of the final decision to withdraw the charges; however the deliberative processes which led to this

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outcome are not released to you. These documents are concerned with decision-making by ASIC, specifically the decision whether or not to proceed with a prosecution.

Documents 12 and 13 would also disclose ASIC's case selection criteria and information from ASIC's confidential database as well as options and recommendations.

Section 47C is a conditional exemption and is subject to the public interest test.

Section 47E – Public interest conditional exemptions—certain operations of agencies

Documents 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13 are also exempt under section 47E of the FOI Act.

Section 47E provides:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

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

The disclosure of these documents would result in an adverse affect on the proper and efficient conduct of ASIC's operations.

Part of ASIC's regulatory role includes enforcement. For ASIC to be able to investigate and regulate appropriately, it relies on information from external third parties. The proper and efficient conduct of ASIC depends on receiving that information and treating it as confidential.

The documents also contain criteria used for decision-making relating to the charges. The release of this type of document would prejudice ASIC's operations by revealing the policies and criteria that guide the allocation of ASIC's investigative resources and the manner in which ASIC undertakes its investigative and prosecution function.

ASIC's roles of receiving, assessing and investigating reports of misconduct is a significant function of ASIC. The documents containing discussion about the charges should not be disclosed because it would provide forewarning of the confidential considerations used by ASIC. The disclosure of information that was used to reach this decision would adversely affect the proper and efficient conduct of ASIC's operations.

ASIC also treats information provided from third parties as confidential. The release of this kind of information to you may lead to a decrease in sources who are willing to come forward and provide that information. This would have a substantial and adverse affect on the intelligence gathering operations of ASIC.

Section 47E is a conditional exemption and is subject to the public interest test.

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.

18 January 2013

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 charges against you. It is known that the charges were withdrawn and finalised in 2007. I do not consider that the information contained in the documents would now inform debate on a matter of public importance.

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

I note that costs were awarded by the Court and that the order was complied with. I therefore do not find that disclosure of the documents would promote effective oversight of public expenditure.

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

The documents contain information about ASIC's processes relating to the charges against you and the withdrawal of those charges. I consider that any benefit that lies in disclosure is outweighed by the adverse affects on ASIC's operations and deliberative processes as outlined above.

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 paragraph 47E(d) of the FOI Act, in addition to the exemption under sections 37 and 42, where applicable.

Section 22

Section 22 of the FOI Act provides that:

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

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

18 January 2013

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

Please note that no charges have been applied to this FOI request. A copy of the released documentation is attached to this letter.

Review Rights

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

If you are dissatisfied with the decision:

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

If you have any questions please contact me on 03 9280 3382 or fiona.crowe@asic.gov.au

Yours sincerely

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

18 January 2013

Schedule of Documents

No	Description of document	Date	No of pages	Decision on access	Relevant section
1	Letter to [REDACTED]	12/9/2007	1	Release	
2	Prosecution Notice	12/9/2007	4	Release	
3	Internal ASIC email	4/12/2007	1	Exempt	47C, 47E
4	Fax to ASIC from third party	3/12/2007	2	Exempt	42
5	ASIC file note	21/11/2007	1	Exempt	42, 47C, 47E
6	ASIC letter to third party	20/11/2007	3	Exempt	42, 47C, 47E
7	ASIC file note	21/11/2007	1	Exempt	42, 47C, 47E
8	Letter to ASIC from third party and attachment	14/11/2007	5	Exempt	47E
9	ASIC file note	19/11/2007	1	Exempt	47C, 47E
10	Internal ASIC email chain	9/11/2007	2	Exempt	47C, 47E
11	Internal ASIC email	9/11/2007	1	Exempt	47C, 47E
12	Document confirming referral of investigation to ASIC specialist team accepted	13/07/2009	2	Exempt	37(2)(b), 47C, 47E
13	Document confirming referral of investigation to ASIC specialist team accepted	13/07/2009	2	Exempt	37(2)(b), 47C, 47E

Divider Tab No. 33

----- Message from [REDACTED] on Tue, 11 Dec 2012 10:01:55
+1100 -----

To: <foirequest@asic.gov.au>

Subject: Freedom of Information
: request

To Whom It May Concern,

I write to ASIC, to request access to documents regarding the Administration Appeals Tribunal case
[REDACTED] and Australian & Investments Commission [REDACTED] AAT file reference
[REDACTED]

I request access to all documents, including but not limited to the brief to legal advisors, external
legal advice, advice from internal legal advisors to ASIC, communications between legal advisors and
ASIC personnel etcetera. All documents regarding the case. Legal Professional Privilege does not
apply in this case, as ASIC has engaged in crimes, fraud and improper purposes. ASIC's internal, and **D**

13 DEC 2012

MISSING DOCUMENT BREACH
[REDACTED]

any external, legal advisors, were used in the commission and furtherance of crimes, frauds, and improper conduct, as such there are no legal privileges.

ASIC committed a fraud against the Administration Appeals Tribunal in this case, in addition to furthering crimes, frauds, and improper purposes. It cannot be said that legal privilege applies as it is not in the public interest for a government agency to commit fraud against the judiciary, or furthering crimes, frauds, and improper purposes. ASIC engaged in offences against me at the AAT.

I request exemption to all costs and charges on the grounds of hardship created by ASIC's furtherance of crimes, frauds, and improper purposes, and ASIC's support for criminal offences committed under the *Corporations Act 2001*, and against me. ASIC continues to support [REDACTED] and Officers engaging in victimisation of a whistleblower, and knowingly support detrimental conduct.

I have not earned an income for over 2 years, and ASIC supports [REDACTED] continuing to charge interest, fees, and charges on my accounts. I am currently 305 days past due on my mortgage, and similarly past due on my credit card to [REDACTED] as I am unable to pay as a result to the involvement of government agencies in supporting the criminal offences of [REDACTED]. ASIC is fully cognisant of this situation, and fails to act, fails to take out an injunction, which was the basis case that was to be reviewed by the AAT, however ASIC committed fraud to avoid decisions being reviewed. I remain an employee, and a protected whistleblower, of [REDACTED], however, ASIC knowingly commits offences under various acts to support this criminal behaviour.

Please send all documents to the following address.

[REDACTED]

Yours sincerely,

[REDACTED]

Divider Tab No. 34



ASIC

Australian Securities & Investments Commission

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

Telephone: (03) 4190 3200
Facsimile: (03) 9280 0444

Our Reference: 56145/12

10 January 2013

By 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 11 December 2012 in which you sought access to the following:

" ... documents regarding the Administration Appeals Tribunal case [REDACTED] and Australian & Investments Commission [REDACTED] AAT file reference. [REDACTED]"

"I request access to all documents, including but not limited to the brief to legal advisors, external legal advice, advice from internal legal advisors to ASIC, communications between legal advisors and ASIC personnel etcetera. All documents regarding the case."

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

In processing your request, I have assumed that you do not seek access to email and letter communications between you and ASIC. If you do seek access to these documents, please advise and they will be provided to you. In addition to emails and letters, this material also consists of submissions and copies of case law filed and served as part of the hearing.

I have identified the documents which come within the terms of your request. I confirm that external legal advice was not obtained. A search of documents, including emails, has been conducted with Mr Matt Povey of the ASIC Chief Legal Office. Mr Povey had carriage of this matter and represented ASIC at the AAT hearing. He prepared documentation regarding the AAT hearing and communicated information to other ASIC personnel. I am therefore satisfied that the documentation located falls within the terms of your request. This material consisted of two folders.

1. The Chief Legal Office File
2. Mr Povey's emails and attachments

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I advise that multiple duplicates of documents were located during the search.

Decision

I have decided to release the documents marked "Release" on the attached Schedule 1. These are documents 1, 2, 6, 12, 13, 15, 24, 25, 28, 29, 30, 31, 32 and 33. A copy of these documents is provided with this letter.

Please note that page 1 of document 28 has been assessed only. The remaining 20 pages is an email from you dated 30/4/2012. As previously advised, if you require another copy of your own email, please notify me.

I advise that I have decided not to release the documents marked "Exempt" in the attached Schedule 1, on the grounds that the documents are exempt from release for the reasons set out in this letter.

The following documents are exempt under section 42 of the FOI Act:

Documents 3, 4, 5, 7, 8, 9, 10, 11, 14, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47.

Section 42 - Documents subject to legal professional privilege

Section 42 of the FOI Act provides:

(1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

I am satisfied that privilege exists. The information contains confidential legal advice provided internally to ASIC by qualified lawyers of ASIC and legal professional privilege arises.

I have considered the following elements of legal professional privilege:

- whether there is a legal adviser-client relationship
- whether the communication was for the purpose of giving or receiving legal advice or for use or in connection with actual or anticipated litigation
- whether the advice given is independent
- whether the advice given is confidential

I am satisfied that a lawyer-client relationship exists between ASIC and its Chief Legal Office where independent and confidential legal advice was provided by a qualified lawyer acting in their capacity as a professional legal adviser to ASIC.

The dominant purpose of the documents is either obtaining or the giving of legal advice for the purposes of the AAT matter.

I am also satisfied that privilege has not been waived.

The following documents are conditionally exempt under section 47C of the FOI Act:

Documents 4, 5, 7, 8, 9, 10, 11, 14, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47.

10 January 2013

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

Section 47C provides:

(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;

The deliberative process is ASIC's thinking process. The disclosure of opinions, consultations, recommendations and deliberations which have taken place for an AAT application would be likely to hinder the capacity of ASIC to fully consult internally and for thorough and accurate information to flow to the Chief Legal Office.

The following documents are conditionally exempt under section 47E of the FOI Act:

Documents 4, 5, 7, 8, 9, 10, 11, 14, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47.

47E - Public interest conditional exemptions--certain operations of agencies

The documents contain information about certain operations of ASIC and are exempt under section 47E(d) of the Act.

Section 47E(d) provides:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

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

ASIC's roles of receiving, assessing and investigating reports of misconduct is a significant function of ASIC. It is important that applications to the AAT can be appropriately considered and that advice from ASIC's Chief Legal Office and Specialist Team Leaders or other areas can be sought and provided. The advice provided from those within ASIC who have expertise may reveal the type of information and criteria that is used to reach an outcome. The internal documents relating to the AAT hearing should not be disclosed because it would provide forewarning of the confidential considerations used by ASIC. Certain documentation is filed and served for the AAT hearing for the conduct of that hearing in line with the Tribunal procedures. The disclosure of any additional information that was used to assist in the preparation of the hearing documents would adversely affect the proper and efficient conduct of ASIC's operations.

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.

10 January 2013

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 Tribunal hearing. Although the matter is of importance to you, 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

The documents contain your personal information including identity and details of your application to the AAT. This information is already publicly available from the AAT published decision and, for this reason; release of this information would merely confirm already publicly available information. I consider that any public benefit that lies in disclosure is outweighed by the adverse affects on ASIC's operations and deliberative processes as outlined above.

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 42, where applicable.

Section 22

Section 22 of the FOI Act provides that:

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

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

10 January 2013

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

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

Review Rights

I provide you with the following information as required by section 26 of the FOI Act. If you are dissatisfied with the decision:

1. You may, within 30 days after the day on which you have been notified of this decision, apply in writing to ASIC for a review of my decision by another ASIC officer under section 54B of the FOI Act. This request should be addressed to me or to the Senior Manager, Administrative Law GPO Box 9827 SYDNEY
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 sincerely

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

10 January 2013

Schedule 1:

No.	Description – Chief Legal Office File	Date	Pages	Decision on access	Relevant sections
1.	File cover	Undated	1	Release	
2.	AAT application form with handwritten comments	17/5/2012	2	Release	
3.	Mr Povey's file note	23/8/2012	1	Exempt	42
4.	Mr Povey's file notes	3/7/2012	4	Exempt	42, 47C, 47E(d),
5.	Mr Povey's file note	8/6/2012	1	Exempt	42, 47C, 47E(d)
6.	Calendar entry for meeting re AAT [redacted] discussion	8/6/2012	1	Release	
7.	Internal ASIC emails	6/6/2012	2	Exempt	42, 47C, 47E(d)
8.	Internal ASIC emails	6/6/2012	2	Exempt	42, 47C, 47E(d)
9.	Internal memo with attachments	26/4/2012	13	Exempt	42, 47C, 47E(d)
10.	Internal ASIC emails	6/6/2012	1	Exempt	42, 47C, 47E(d)
11.	Internal ASIC emails	6/6/2012	1	Exempt	42, 47C, 47E(d)
12.	Email from AAT to ASIC	24/8/2012	1	Release	
13.	Letter from AAT to ASIC	24/8/2012	2	Release	
14.	Respondents draft submissions for AAT hearing (with handwritten comments)	Undated	6	Exempt	42, 47C, 47E(d)
15.	Letter from AAT to ASIC	31/5/2012	1	Release	
16.	Internal briefing note	29/5/2012	1	Exempt	42, 47C, 47E

Schedule 1 continued:

No.	Description – Mr Povey emails folder	Date	Pages	Decision	Relevant sections
17.	Internal ASIC email and attachment	17/07/2012	7	Exempt	42, 47C, 47E
18.	Internal ASIC emails	17/7/2012	1	Exempt	42, 47C, 47E(d)
19.	Internal ASIC emails	3/7/2012	1	Exempt	42, 47C, 47E(d)
20.	Internal ASIC emails	6/6/2012	1	Exempt	42, 47C, 47E(d)
21.	Internal ASIC emails	6/6/2012	2	Exempt	42, 47C, 47E(d)
22.	Internal ASIC emails and attached draft document	26/6/2012	1	Exempt	42, 47C, 47E(d)
23.	Internal ASIC emails	29/8/2012	1	Exempt	42, 47C, 47E(d)
24.	Letter from AAT to ASIC	4/7/2012	1	Release	
25.	Directions from AAT	3/7/2012	1	Release	
26.	Internal ASIC emails	9/7/2012	1	Exempt	42, 47C, 47E(d)
27.	Internal ASIC emails	11/7/2012	1	Exempt	42, 47C, 47E(d)
28.	Page 1 of email 'Confirmation of ASIC's position'	17/7/2012	1	Release	
29.	Email [redacted] v ASIC AAT Melbourne Proceeding No. [redacted]	11/7/2012	1	Release	
30.	Email [redacted] v ASIC AAT Melbourne Proceeding No. [redacted]	12/7/2012	2	Release	
31.	Email [redacted] v ASIC AAT Melbourne Proceeding	11/7/2012	2	Release	

10 January 2013

	No. [REDACTED]				
32.	Email [REDACTED] v ASIC'	17/7/2012	1	Release	
33.	Letter to [REDACTED] from ASIC (with handwritten comments)	16/3/2012	2	Release	
34.	Internal ASIC emails	11/7/2012	2	Exempt	42, 47C, 47E(d)
35.	Internal ASIC emails	24/8/2012	1	Exempt	42, 47C, 47E(d)
36.	Internal ASIC emails and attached document	22/6/2012	8	Exempt	42, 47C, 47E(d)
37.	Internal ASIC emails	24/8/2012	2	Exempt	42, 47C, 47E(d)
38.	Internal ASIC emails	27/6/2012	2	Exempt	42, 47C, 47E(d)
39.	Internal ASIC email	27/6/2012	1	Exempt	42, 47C, 47E(d)
40.	Internal ASIC email	27/6/2012	2	Exempt	42, 47C, 47E(d)
41.	Internal ASIC email	03/07/2012	1	Exempt	42, 47C, 47E(d)
42.	Internal ASIC email	6/06/2012	2	Exempt	42, 47C, 47E(d)
43.	Internal ASIC email	11/07/2012	2	Exempt	42, 47C, 47E(d)
44.	Internal ASIC email	11/7/2012	1	Exempt	42, 47C, 47E(d)
45.	Email chain [REDACTED] -v- Australian Securities & Investments Commission AAT Melbourne Proceeding No. [REDACTED]	12/7/2012	3	Exempt	42, 47C, 47E(d)
46.	Email chain [REDACTED] v ASIC'	18/7/2012	1	Exempt	42, 47C, 47E(d)
47.	Internal ASIC email	18/7/2012	2	Exempt	42, 47C, 47E(d)

Divider Tab No. 35

Date: 24/3/2013



Freedom of Information Request

Received
by
ASIC
6/4/2013

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

This is a request pursuant to the Freedom of Information Act.

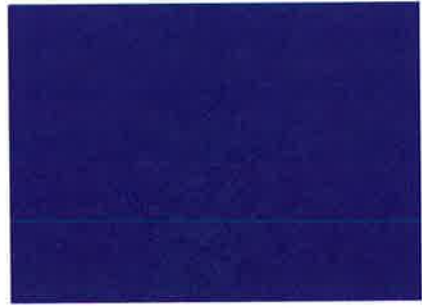
I am seeking the assessment and/or report, including but not limited to any assessment, report, advice, memorandum, note or similar record or document whether in written or electronic form prepared by or under the direction of Mr. Patrick Foran of ASIC Breach and Misconduct activity in relation to complaints made to ASIC about the conduct by [REDACTED]

To assist in identifying the particular documents to which this request relates, I am one of the victims of conduct by [REDACTED] acting allegedly under the direction and control of the [REDACTED] and [REDACTED]. ASIC Commissioner Peter Kell in his testimony at the Senate Inquiry, recommended that victims resubmit their senate testimony to ASIC via Mr. Matthew Abbott. The Senate Committee recommended [REDACTED] that ASIC investigate the [REDACTED]

On 21st December 2012 I received a call from Mr. Patrick Foran (ASIC Breach and Misconduct) informing me that he had been assigned to look into the allegations of misconduct by [REDACTED]. Following the telephone call I contacted all victims of the alleged misconduct and informed them to resubmit their senate submission and evidence of misconduct to Mr. Foran. This request is for the report, assessment and/or report created by or at the direction of Mr. Patrick Foran containing the complaints, the conduct, the relevant legislative provisions, assessment and recommendations.

I have a personal interest in this information and consider the information is not confidential because the allegations of [REDACTED] misconduct are already matters of public record having been widely published in the major media and has been the subject of a Senate Committee Inquiry.

Notices under the FOI Act may be sent to me at:



RECEIVED
10 APR 2013
MISCONDUCT & BREACH
REGISTRATION AND

Divider Tab No. 36



ASIC

Australian Securities & Investments Commission

Our Reference: 15021/13

6 May 2013

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

Telephone: (03) 9230 3200
Facsimile: (03) 9230 3444
ASIC website: www.asic.gov.au

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 6 April 2013 in which you sought access to the assessment document prepared by Mr Patrick Foran concerning complaints (reports of misconduct) made to ASIC about the conduct by [REDACTED]

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

I have identified the assessment documents which come within the terms of your request. These are listed in the Schedule to this letter. Please note that at the time of your request and to date, Mr Patrick Foran has not commenced the assessment of your report of misconduct. I can confirm that no other analyst or ASIC staff member has completed an assessment within the terms of your request under his direction. I can also confirm that there is no assessment commenced in draft form.

The Schedule sets out the assessments prepared following reports of misconduct received by ASIC about [REDACTED]. I advise that one of the assessments included attachments provided by the reporter of misconduct. One of these attachments is available online. It therefore has not been included in your request as it is already available to the public. This document is titled "[REDACTED]" and is dated March 2012. The additional attachments which are not publicly available have been assessed for release.

Decision

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 following reasons:

Paragraph 37(2)(b) – Documents affecting enforcement of law and protection of public safety

The documents are exempt under paragraph 37(2)(b), which provides:

06 May 2013

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.

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 alleged 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.

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

Section 47C provides that 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.

The deliberative process is ASIC's thinking process. The disclosure of the assessment would reveal 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.

This exemption is subject to the public interest test.

Paragraph 47E(d) - Public interest conditional exemptions--certain operations of agencies

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

The disclosure of the assessment would have a substantial adverse effect on the proper and efficient conduct of the operations of ASIC. This is because ASIC relies heavily on information from the public to assist in identifying systemic misconduct. If those information sources become restricted due to fear of disclosure, it will have a substantial and adverse affect on ASIC's operational ability to gather intelligence through reports of misconduct.

The disclosure of the assessment document would also provide details of the confidential considerations used by ASIC. The confidential methodology used by ASIC should not be made public as such information could assist persons to evade regulatory detection and action, as it would provide forewarning of ASIC's considerations.

This exemption is subject to the public interest test.

Section 47F - Public interest conditional exemptions--personal privacy

06 May 2013

The assessments also contain the names and personal information of persons who have lodged reports of misconduct with ASIC. Personal information is defined in section 4 of the FOI Act.

Section 47F of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person.

The disclosure of this information would involve unreasonable disclosure of personal information about third parties, namely, the persons who lodged reports of misconduct with ASIC. I have taken into consideration the following:

- the extent to which the information is well known;
- 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; and
- the availability of the information from publicly accessible sources.

It is acknowledged that the publicly accessible Senate Inquiry disclosed the existence of reports of misconduct to ASIC. However, the identity of those who lodged the reports is not well known. When persons lodge reports of misconduct with ASIC, their information is considered to be confidential. In addition, the nature of the information is relevant to the determination that disclosure would be unreasonable. This is because the personal information extends beyond the identity of those persons. The assessment documents include details of information that the person provided to ASIC relating to their report of misconduct, such as details of their financial situation.

This exemption is subject to the public interest test.

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.

It is acknowledged that the issue of the [REDACTED] has involved public attention. However, given that there are other reports of misconduct concerning similar issues yet to be assessed, and possibly yet to be submitted to ASIC, I do not consider that that the

06 May 2013

content of these particular documents would inform debate because disclosure would give an incomplete view of the matter.

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 previously advised, the assessments involve the personal information of third parties. The release of the documents would not allow you to access your own personal information.

I find that, on balance, disclosure of the conditionally exempt documents would be contrary to the public interest. The public benefit that lies in disclosure is outweighed by the adverse affects on ASIC's operational activities and deliberative processes. Those adverse affects include prejudice to ASIC's ability to obtain similar confidential information in the future. The disclosure is also outweighed by the adverse affect that disclosure could have in the event that ASIC has determined or determines to take formal investigation or regulatory action into the issues raised in the reports of misconduct.

I find, therefore, that documents 1 to 4 are exempt from release under section 47C, paragraph 47E(d) and section 47F of the FOI Act, in addition to the exemption under paragraph 37(2)(b). I find that document 5 is exempt from release under paragraph 47E(d) and section 47F of the FOI Act.

Section 22

Section 22 of the FOI Act provides that:

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

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

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

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:

06 May 2013

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 at:

GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001.

Yours sincerely

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

06 May 2013

Schedule of Documents

No.	Description of document	Date	No. of pages	Decision on access	Relevant sections
1.	ASIC assessment of report of misconduct	5/3/2013	6	Exempt	37(2)(b), 47C, 47E(d) and 47F
2.	ASIC assessment of report of misconduct	13/3/2013	8	Exempt	37(2)(b), 47C, 47E(d) and 47F
3.	ASIC assessment of report of misconduct	25/3/2012	7	Exempt	37(2)(b), 47C, 47E(d) and 47F
4.	ASIC assessment of report of misconduct	11/3/2013	6	Exempt	37(2)(b), 47C, 47E(d) and 47F
5	Attachments to document 4 which were provided by the reporter of misconduct.	Undated	16	Exempt	47E(d) and 47F

Divider Tab No. 37

BY EMAIL: FOIrequest@asic.gov.au
The Senior Manager
Administrative Law Team
Australian Securities & Investments Commission
GPO Box 9827
SYDNEY NSW 2001

Private & Confidential

21 September 2012

Dear Sir or Madam,

Re: FOI request by Mr Brendan Ritson

This is a request pursuant to the *Freedom of Information Act 1982* (Cth).

Please provide me with access to all documents in relation to my complaints about [REDACTED] dated 17 April 2012, 28 June 2012 and 5 September 2012, including (but not limited to) the following:

1. All documents created by ASIC; and
2. All documents sent to, and received from, [REDACTED]

Please forward the documents by way of email to the address below.

Kind regards,

[REDACTED]

Divider Tab No. 38



ASIC

Australian Securities & Investments Commission

Our Reference: 42948/12

2 October 2012

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

Telephone: (03) 9280 3200
Facsimile: (03) 9280 3444
ASIC website: www.asic.gov.au

BY EMAIL [REDACTED]

Dear [REDACTED]

Acknowledgment of Freedom of Information Request

I refer to your letter of 21 September 2012, received by this office on 21 September 2012, and discussed with you on 1 October 2012.

You have sought access under the *Freedom of Information Act 1982* (FOI Act) to the following documents which relate to your complaints about [REDACTED] [REDACTED] dated 17 April 2012, 28 June 2012 and 5 September 2012 (Complaints):

1. all internal documents created by ASIC which record ASIC's decision in relation to your Complaints;
2. all documents which evidence communications between ASIC and [REDACTED]

Your request constitutes a valid application from 22 September 2012. Subject to certain exceptions (for example where it becomes necessary to consult with affected third parties in respect to the disclosure of documents caught by the terms of the request) which may extend the processing time period, the FOI Act provides that an application must be processed within 30 days after receipt of a valid application.

You should note that, while the first five hours of decision making is free of charge, charges may be assessed for time spent in searching for and retrieving relevant documents, decision-making time in excess of five hours, photocopying and postage. You will be told the assessment of the amount to be charged at the time of the decision about access.

02 October 2012

Agency Publication Obligations

You are advised 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.

Should you have any questions concerning the processing of your request please contact me on telephone (03) 9280 3323.

Yours faithfully

Megan Dillon

**Authorised Decision- maker pursuant to section 23(1) of the FOI act
for the Australian Securities and Investments Commission**

Divider Tab No. 39

Our Reference: 42948/12



ASIC

Australian Securities & Investments Commission

9 October 2012



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

Facsimile: (03) 9250 3444
ASIC website: www.asic.gov.au

BY EMAIL: [Redacted]

Dear [Redacted]

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

Thank you for your request under the *Freedom of Information Act 1982 (FOI Act)* received by this office on 21 September 2012.

Your request

You have requested access under the FOI Act to the following documents which relate to your complaints about [Redacted] dated 17 April 2012, 28 June 2012 and 5 September 2012 (Complaints):

1. all internal documents created by ASIC which record ASIC's decision in relation to your Complaints; and
2. all documents which evidence communications between ASIC and [Redacted]

I am the authorised decision-maker under subsection 23(1) of the FOI Act for your request.

Documents within the terms of your request

I have identified 6 documents which come within the terms of your request. These are listed in the Schedule to this letter.

Decision

I have decided that the 6 documents are exempt or conditionally exempt under the FOI Act and it is not in the public interest to release these documents. Accordingly, I have decided not to release these documents.

09 October 2012

Reasons for decision

1) Section 37 – Documents affecting enforcement of law and protection of public safety

Subsection 37(2) of the FOI Act states:

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

Documents 1, 3, 4 and 5 disclose the methods and procedures for dealing with matters arising out of breaches of the law that ASIC administers. Documents 3 and 4 show the assessment procedure that was applied to the Complaints, and list the specific criteria and priorities which ASIC used to determine whether to take action and documents 1 and 5 demonstrate ASIC's regulatory response.

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. I consider that disclosure of those methods and procedures would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures as it would provide forewarning of the considerations used by ASIC to assess reports of misconduct, and of ASIC's regulatory response.

As such, I am of the opinion that documents 1, 3, 4 and 5 are exempt from release pursuant to paragraph 37(2)(b) of the FOI Act.

2) Section 45 – Documents containing material obtained in confidence

Subsection 45(1) of the FOI Act states:

"A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island) for breach of confidence."

Documents 1, 2, 5 and 6 record information sent to, and received from, an external third party in confidence.

ASIC must take reasonable measures to prevent unauthorised use and disclosure of information it sends and receives in confidence in connection with its statutory functions. Person or entities with whom ASIC communicates, and from whom ASIC obtains information, would be less likely to cooperate and be forthcoming with information if the information communicated could be released under the FOI Act. Further, in the context of reports of misconduct, the release of such information could result in public criticism of a third party, in circumstances where there has been no formal finding of misconduct.

09 October 2012

As such, I am of the opinion that documents 1, 2, 5 and 6 are exempt from release pursuant to subsection 45(1) of the FOI Act.

3) Section 47 – Documents disclosing trade secrets or commercially valuable information

Subsection 47(1) of the FOI Act states:

"A document is an exempt document if its disclosure under this Act would disclose (a) trade secrets; or (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed".

Document 2 contains information about a third party's client base and pricing. While this information may be known by some, it would not be known by all of the third party's competitors, and therefore may be of commercial value.

As such I am of the opinion that document 2 is exempt from release pursuant to subsection 47(1) of the FOI Act.

4) Section 47C – Deliberative Processes

Subsection 47C(1) 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 ... (a) an agency".

A deliberative process involves the exercise of judgment in developing and making a selection from different options. It is, in other words, an agency's thinking processes.

I consider that documents 3 and 4 disclose opinions, consultations, recommendations and deliberations which have taken place in the course of the assessment procedure that was applied to the Complaints.

As such, I am of the opinion that documents 3 and 4 are conditionally exempt from release pursuant to subsection 47C(1) of the FOI Act. I note that section 47C is subject to a public interest test.

5) Section 47E – Certain operations of agencies

Section 47E of the FOI Act states:

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

Documents 3 and 4 show the assessment procedure that was applied to the Complaints, list specific criteria and priorities which ASIC uses to

09 October 2012

determine whether to take action, and disclose opinions, consultations, recommendations and deliberations which have taken place in the course of ASIC's deliberative process. Disclosure of these documents could have a substantial adverse effect on the proper and efficient conduct of the operations of ASIC because it would provide forewarning of the considerations used by ASIC to assess complaints and of ASIC's regulatory response.

Documents 1, 2, 5 and 6 record information sent to, and received from, an external third party in confidence. In the course of exercising its functions and powers, ASIC communicates with third parties on a confidential basis. The release of these documents could have a substantial adverse effect on ASIC's operations because third parties may be less likely to cooperate with ASIC if the information they provide could be released under the FOI Act.

As such, I am of the opinion that documents 1, 2, 3, 4, 5 and 6 are conditionally exempt from release pursuant to section 47E of the FOI Act. I note that section 47E is subject to a public interest test.

6) Section 47F – Personal privacy

Section 47F of the FOI Act states:

"A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person".

Personal information is defined in section 4 of the FOI Act.

Document 2 contains personal information about a person, namely, the identity of a third party's client.

As such I am of the opinion that document 2 is conditionally exempt from release pursuant to section 47F of the FOI Act. I note that section 47F is subject to a public interest test.

7) Section 47G – Business Information

Section 47G of the FOI Act states:

"A document is conditionally exempt if its disclosure under this Act would disclose information ... concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information (a) would, or could reasonably be expected to, unreasonably affect ... that organisation or undertaking in respect of its lawful business, commercial or financial affairs".

Document 2 contains information about a third party's client base and pricing. While this information may be known by some, it would not be known by all of the third party's competitors, and therefore may be of commercial value.

09 October 2012

As such I am of the opinion that document 2 is conditionally exempt from release pursuant to section 47G of the FOI Act. I note that section 47G is subject to a public interest test.

8) *Public Interest*

The FOI Act provides that access must be given to a conditionally exempt document (those identified at (4) to (7) above), unless it would on balance be contrary to the public interest.

I have had regard to the following factors outlined in subsection 11B(3) of the FOI Act, being factors favouring access to the documents in the public interest:

a) Promotes the objects of the FOI Act

Disclosure of the documents identified under sections 47C, 47E, 47F and 47G would inform the community of ASIC's operations and would increase scrutiny, discussion, comment and review of ASIC's decisions.

b) Inform debate on a matter of public importance

While compliance with ASIC's legislation is a matter of public importance, I do not consider that disclosure of the documents identified under sections 47C, 47E, 47F and 47G would inform debate on issues of broad public importance.

c) Promote effective oversight of public expenditure

I do not find that disclosure of the documents identified under sections 47C, 47E, 47F and 47G of the FOI Act would promote effective oversight of public expenditure as these documents do not relate to matters of public expenditure.

d) Allow a person to access his or her own personal identification

I do not find that disclosure of the documents identified under section 47C, 47E, 47F and 47G of the FOI Act would allow you to access your own personal information.

I have also had regard to facts weighing against disclosure of documents identified under the FOI Act. I consider that the considerations discussed at (1) to (7) above weigh against disclosure. Additionally, I consider that release of the documents 2 and 3 would be contrary to the public interest because it may impair the ability of ASIC officers to consider effectively the competing aspects of a matter under consideration and may discourage staff from making and expressing observations, opinions and recommendations.

As such, I am of the view that the public interest in disclosure is outweighed by the adverse effects on ASIC's regulatory function.

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Access to edited copies with exempt or irrelevant matter deleted

Section 22 of the FOI Act states:

"(1)(a) if 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 .. to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that (i)access to the edited copy would be required to be given under section 11A and (c) it is reasonably practicable for the agency... having regard to i) the nature and extent of the modification and ii) the resources available to modify the document.....(2) the agency must (a) prepare the edited copy ... and (b) give the applicant access to the edited copy".

I have considered whether, pursuant to section 22 of the FOI Act, access should be given to part of the aforementioned exempt documents. For the reasons which I have provided as the basis of the exemptions, I find that it would not be possible to make copies of the documents with such deletions that the documents would not be exempt documents.

Processing charges

In my letter of 2 October 2012 I advised that charges will be assessed for time spent processing your application.

In accordance with section 29 of the FOI Act, you are liable to pay a charge for the processing of your request. The assessment of that charge is as follows:

Search and retrieval time	Negligible	=	\$ 0.00
Decision making time	5.00 hours x \$20 per hour	=	\$100.00
Subtotal		=	\$100.00
Minus 1 st 5 hours of decision making time*		=	\$100.00
Total		=	\$ 0.00

**The Freedom of Information (Charges) Regulations 1982 provide that the first five hours of decision making time is free.*

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 2001 or by email to foirequest@asic.gov.au

09 October 2012

2. 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.
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.

If you have any questions in relation to this letter please contact me on 03 9280 3323.

Yours sincerely

Megan Dillon
Authorised Decision-maker pursuant to section 23(1) of the FOI act
for the Australian Securities and Investments Commission

09 October 2012

Schedule of Documents

No	Description of document	Date	No of folios	Decision on access	Relevant section(s)
1.	Correspondence	30/04/12	2	Exempt	s37 s45 s47E
2.	Correspondence (includes attachments)	11/05/12	4	Exempt	s45 s47 s47E s47F s47G
3.	Internal document	16/05/12	5	Exempt	s37 s47C s47E
4.	Internal document	25/07/12	6	Exempt	s37 s47C s47E
5.	Correspondence	01/08/12	2	Exempt	s37 s45 s47E
6.	File note of telephone conversation	06/09/12	1	Exempt	s45 s47E

Divider Tab No. 40



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: 45136/12
PCS 2012/24426

23 October 2012



Also via email: 

Dear 

Request For Internal Review Under Section 54B Of The Freedom Of Information Act 1982


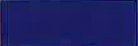
I refer to your letter of 9 October 2012 received by this office on the same date, in which you requested that an internal review be conducted under section 54B of the Freedom of Information Act 1982 (FOI Act) in respect of the decision of 9 October 2012 refusing you access to certain documents.

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

Terms of your request

I note your request of 21 September 2012 under the FOI Act, was amended on 1 October 2012, and was in the following terms:

Access to all documents:

- 1) created by ASIC which evidence ASIC's decision in relation to your complaints about  and/or
- 2) evidencing communications between ASIC and 

Documents within the terms of your request

I have identified 13 documents which I consider fall within the terms of your request. These are listed in the Schedule to this letter.

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Material taken into account

In reviewing your request, I have taken into account:

- the terms of your request;
- the contents of the documents in question;
- relevant provisions of the FOI Act; and
- Office of the Australian Information Commissioner guidance on the FOI Act.

Decision

I advise that as a result of my review of the earlier decision I have decided to release the documents marked "Release" on the attached Schedule, under your FOI request. These are documents 7, 8, 9, 10, 11, 12 and 13.

I advise that a number of documents to which you have sought access marked "Exempt" on the attached Schedule, will not be released on the basis of them being exempt documents, on the grounds set out below. These are documents 1, 2, 3, 4, 5 and 6.

Reasons for decision to exempt certain documents

1) *Section 37 – Documents affecting enforcement of law and protection of public safety*

Subsection 37(2) of the FOI Act states:

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

Documents 1, 3, 4, 5 and 6 disclose the methods and procedures for dealing with matters arising out of potential breaches of the law that ASIC administers. Documents 3 and 4 show the assessment procedure that was applied to the complaints, and list the specific criteria and priorities which ASIC used to determine whether to take action. Documents 1, 5 and 6 demonstrate ASIC's regulatory response and methods for dealing with matters arising out of potential breaches.

These documents contain information pertaining to methods and procedures used by ASIC in inquiry into suspected breaches of the law in particular circumstances and in respect of a particular type of inquiry. I am of the view that the release of these documents will reveal how ASIC uses these particular methods and procedures in the context of a particular type of conduct being inquired into.

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

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procedures are used. I agree with the initial decision maker that disclosure of those methods and procedures would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures as it would provide forewarning of the considerations used by ASIC to assess reports of misconduct, and of ASIC's regulatory response.

As such, I am of the opinion that documents 1, 3, 4, 5 and 6 are exempt from release pursuant to paragraph 37(2)(b) of the FOI Act.

2) Section 45 – Documents containing material obtained in confidence

Subsection 45(1) of the FOI Act states:

"A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island) for breach of confidence."

Documents 1, 2, 5 and 6 record information sent to, and received from, an external third party in confidence.

ASIC must take reasonable measures to prevent unauthorised use and disclosure of information it sends and receives in confidence in connection with its statutory functions. Person or entities with whom ASIC communicates, and from whom ASIC obtains information, would be less likely to cooperate and be forthcoming with information if the information communicated could be released under the FOI Act. Further, in the context of reports of misconduct, the release of such information could result in public criticism of a third party, in circumstances where there has been no formal finding of misconduct.

As such, I agree with the initial decision maker that documents 1, 2, 5 and 6 are exempt from release pursuant to subsection 45(1) of the FOI Act.

3) Section 47 – Documents disclosing trade secrets or commercially valuable information

Subsection 47(1) of the FOI Act states:

"A document is an exempt document if its disclosure under this Act would disclose (a) trade secrets; or (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed".

Document 2 contains commercially valuable information about a third party's client base and pricing. While this information may be known by some, it would not be known by all of the third party's competitors and clients. I find that such commercial value may reasonably be expected to be diminished or destroyed if such information was to be disclosed.

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As such I agree with the initial decision maker that document 2 is exempt from release pursuant to subsection 47(1) of the FOI Act.

4) Section 47C – Deliberative Processes

Subsection 47C(1) 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... (a) an agency".

A deliberative process involves the exercise of judgment in developing and making a selection from different options. It is, in other words, an agency's thinking processes.

I consider that documents 3 and 4 disclose opinions, consultations, recommendations and deliberations which have taken place in the course of the assessment procedure that was applied to the complaints. Given the nature of the information contained in the documents, the release of the documents would be likely to impede or have an adverse effect on the capacity of ASIC to frankly, fully and properly consider complaints.

I agree with the initial decision maker that documents 3 and 4 are conditionally exempt from release pursuant to subsection 47C(1) of the FOI Act. I also note that section 47C is subject to a public interest test.

5) Section 47E – Certain operations of agencies

Section 47E of the FOI Act states:

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

Documents 3 and 4 show the assessment procedure that was applied to the complaints, list specific criteria and priorities which ASIC uses to determine whether to take action, and disclose opinions, consultations, recommendations and deliberations which have taken place in the course of ASIC's deliberative process. Disclosure of these documents could have a substantial adverse effect on the proper and efficient conduct of the operations of ASIC because it would provide forewarning of the confidential considerations used by ASIC to assess complaints and of ASIC's regulatory response.

Documents 1, 2, 5 and 6 record information sent to, and received from, an external third party in confidence. In the course of exercising its functions and powers, ASIC communicates with third parties on a confidential basis to make inquiries. The release of these documents could likely have a substantial adverse effect on ASIC's

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operations because third parties will be less likely to cooperate with ASIC if such confidential communications are made public.

Given the above, I agree with the initial decision maker that documents 1, 2, 3, 4, 5 and 6 are conditionally exempt from release pursuant to section 47E of the FOI Act. I note that section 47E is subject to a public interest test.

6) Section 47F – Personal privacy

Section 47F of the FOI Act states:

"A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person".

Personal information is defined in section 4 of the FOI Act.

Document 2 contains personal information about a person, namely, the identity of a third party's client. It also contains other personal information about a third party. Disclosure of this document would involve unreasonable disclosure of personal information about third parties and contains personal information which is not in the public domain. Disclosure of this document would in my view involve the unreasonable invasion of privacy of the persons named in the document.

As such I agree with the initial decision maker that document 2 is conditionally exempt from release pursuant to section 47F of the FOI Act. I note that section 47F is subject to a public interest test.

7) Section 47G – Business Information

Section 47G of the FOI Act states:

"A document is conditionally exempt if its disclosure under this Act would disclose information ... concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information (a) would, or could reasonably be expected to, unreasonably affect ... that organisation or undertaking in respect of its lawful business, commercial or financial affairs".

Document 2 contains information concerning the commercial affairs of a third party. I find that the disclosure of that information would or could reasonably be expected to unreasonably affect that organisation in respect of its lawful business, commercial or financial affairs.

As such I agree that document 2 is conditionally exempt from release pursuant to section 47G of the FOI Act. I note that section 47G is subject to a public interest test.

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8) *Public Interest*

The FOI Act provides that access must be given to a conditionally exempt document (those identified at paragraphs (4) to (7) above), unless it would on balance be contrary to the public interest.

I agree with the decision and reasoning of the initial decision maker in concluding that the public interest in disclosure is outweighed by the adverse effect on ASIC's regulatory function and operations. In addition to the matters noted in the initial decision maker's statement of reasons and above, I am also of the view that:

- Individuals who provide information to ASIC in confidence will be less likely to voluntarily provide such information if such information is made public.
- Confidential methodology used by ASIC should not be made public as such information could assist persons to circumvent regulatory detection and action.
- Release of this information would not inform debate on a matter of public importance.
- For these reasons, and the reasons noted above, I am of the opinion that the public interest in releasing these documents is outweighed by the factors weighing against disclosure.

Access to edited copies with exempt or irrelevant matter deleted

Section 22 of the FOI Act states:

"(1)(a) if 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 .. to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that (i) access to the edited copy would be required to be given under section 11A and (c) it is reasonably practicable for the agency... having regard to i) the nature and extent of the modification and ii) the resources available to modify the document.....(2) the agency must (a) prepare the edited copy ... and (b) give the applicant access to the edited copy".

I have considered whether, pursuant to section 22 of the FOI Act, access should be given to part of the aforementioned exempt documents. For the reasons which I have provided as the basis of the exemptions, I agree with the initial decision maker that it would not be possible to make copies of the documents with such deletions that the documents would not be exempt documents.

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

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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.

Rights of review

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

Aletta Newman

**(Authorised internal-reviewer under subsection 54(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(s)
1.	Correspondence between ASIC and third party	30/04/2012	2	Exempt	Section 37(2)(b) Section 45(1) Section 47G Section 47E
2.	Correspondence between ASIC and third party (including attachments)	11/05/2012	4	Exempt	Section 45(1) Section 47(1) Section 47E Section 47F Section 47G
3.	Internal document	16/05/2012	5	Exempt	Section 37(2)(b) Section 45(1) Section 47C Section 47E
4.	Internal document	25/07/2012	6	Exempt	Section 37(2)(b) Section 45(1) Section 47C Section 47E
5.	Correspondence between ASIC and third party	01/08/2012	2	Exempt	Section 37(2)(b) Section 45(1) Section 47C Section 47E
6.	File note of telephone conversation with third party	06/09/2012	1	Exempt	Section 37(2)(b) Section 45(1) Section 47C Section 47E Section 47(1) Section 47G
7.	Correspondence from ASIC to yourself communicating outcome of ASIC's decision in [REDACTED]	17/08/2012	2	Release	N/a
8.	Correspondence from ASIC to yourself communicating outcome of ASIC's decision in [REDACTED]	01/08/2012	2	Release	N/a
9.	Correspondence from ASIC to	17/08/2012	2	Release	N/a

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	yourself communicating outcome of ASIC's decision in [REDACTED]				
10.	Email correspondence from ASIC to yourself	10/09/2012	1	Release	N/a
11.	Correspondence from ASIC to yourself communicating outcome of ASIC's decision in [REDACTED]	10/09/2012	1	Release	N/a
12.	Email correspondence from ASIC to yourself to which ASIC attached PDF document with amended letter	17/08/2012	1	Release	N/a
13.	Correspondence from ASIC to yourself communicating outcome of ASIC's decision in [REDACTED] (unsigned copy)	01/08/2012	2	Release	N/a