



ASIC
Australian Securities &
Investments Commission

**Australian Securities
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Our Reference: FOI 141-2024

12 July 2024

Dear Me

Freedom of Information Request No. FOI 141-2024

Notice of a practical refusal ground under s24AB of the FOI Act

I refer to your request dated 5 July 2024 under the *Freedom of Information Act 1982 (FOI Act)* in which you seek access to documents in the possession of the Australian Securities and Investments Commission (**ASIC**).

Your request seeks access to documents as follows:

- All emails sent by ASIC between 0000 1 July and 2359 5 July 2024, where:
- The author is an ASIC SES (or equivalent), including acting SES, and
- The email relates in any way to the SERC report on ASIC investigation and enforcement (whether before or after the report's formal tabling), and
- The email was not sent outside the Commonwealth (that is, internal emails, or to other Commonwealth entities, or a minister/their office, are all included; emails to journalists, or companies (that are not CCEs), or private citizens are excluded)

Personal information of any SES or equivalent, including a/SES and SES at other departments, is included unless (1) it is sensitive personal information, or (2) it is a non-work contact detail (such as a mobile phone number where the employer didn't provide the phone)

Duplicates are excluded - one email trail is sufficient if it has all the emails in scope

Attachments to emails, and other documents referred to in emails, are included

Third party personal information, apart from SES as above, is excluded except for first names

All emails domains ('@asic.gov.au') are included

All email addresses are included subject to the above. So positional emails and SES names included, other names excluded except first name

I am writing to advise you that I believe that the work involved in processing your request in its current form would substantially and unreasonably divert the

resources of ASIC from its other operations due to the broad scope of the request. This is called a 'practical refusal reason' (s 24AA).

On this basis, I intend to refuse access to the documents you requested. The purpose of this letter is to provide you with an opportunity to revise your request so that the practical refusal reason no longer exists before a final decision is made. This is called a 'request consultation process' as set out under s 24AB of the FOI Act. Should you wish to submit a revised request please consider the issues raised in this notice to ensure that they are addressed.

Substantial and unreasonable diversion of resources: s 24AA(1)(a) FOI Act

For the reasons below, I consider that a practical refusal reason within the meaning of section 24AA(1)(a) of the FOI Act exists in relation to your request on the basis that processing your request in its current terms would substantially and unreasonably divert the resources of ASIC from its other operations.

Following preliminary inquiries, it appears that the searches that would be required for documents within the scope of your request would amount to a substantial and unreasonable diversion of ASIC's resources from its other operations. Specifically:

- Preliminary inquiries were coordinated by liaising with People & Development to identify the individuals that are the subject of your FOI request.
- On 9 July 2024, People & Development returned a list of 58 individuals in roles at the SES level at ASIC as of 5 July 2024.

Based on the following considerations I am of the view that it would take in excess of 58 hours to process the request in the present terms:

1. it would take at least one hour for each SES to conduct keyword searches for relevant documents across their mailboxes as well as relevant folders on ASIC's document management system, and prepare the documents for the FOI team
2. assessing the documents would require additional processing time, noting the nature of the requested documents are such that an FOI decision-maker would have to obtain advice from subject matter experts; and
3. additional time would be required to prepare the decision letter and schedule of documents.

An estimate of processing time is only one consideration to be taken into account when deciding whether a practical refusal reason exists. I have also considered that:

- processing the request in its present terms will require a significant amount of time to be dedicated by all SES-level staff at ASIC. This would significantly impact the progress of significant regulatory and operational tasks that require careful consideration and timely action by ASIC's senior management
- processing the request in its present terms will require a significant amount of time to be dedicated by FOI staff which will impact upon the time available to process other FOI requests; and
- at present the terms of the request are framed broadly.

For the reasons above, processing your request in its current terms would substantially and unreasonably divert the resources of ASIC from its other operations.

Intention to refuse request and invitation to revise scope

Accordingly, I intend to refuse your request given that a practical refusal reason exists within the meaning of s 24AA(1)(a) of the FOI Act. However, before a final decision is made you are invited to revise the terms of your request.

Given that preliminary inquiries relevant to searches for the requested documents indicate that the searches for the requested documents would involve a diversion of resources, you may wish to consider narrowing the scope of your request. Specifically, you may wish to make a request targeted to Executive Directors. Executive Directors are the most senior tier of the SES at ASIC. There are six individuals identified as holding Executive Director roles in the list of SES provided by People & Development.

If you narrow the scope of the request to these documents, the practical refusal reason would not exist on the basis of the required searches.

I would also be assisted with your clarification in relation to the specified date range "*between 0000 1 July and 2359 5 July 2024*". Specifically, whether this is a reference to the period between 12 midnight on 30 June and 12 midnight on 5 July 2024.

Timeframe

The statutory timeframe for notifying an applicant of a decision on a request for access under the FOI Act is 30 days from the day the agency receives the request. Please note that in accordance with section 24AB(8) of the FOI Act, the time for processing your request is suspended from the day that you receive this letter, and resumes on the day after you provide ASIC with one of the following:

- written notification that you wish to withdraw the request;
- a revised written request addressing the matters raised above; or
- written notification that you do not wish to revise your request.

If you choose to do one of the three things listed above, you must do so within 14 days of the date of this letter (**the consultation period**). If you do not do one of the three things listed above during the consultation period, your request will be taken to be withdrawn in accordance with section 24AB(7) of the FOI Act.

During the consultation period you may wish to seek assistance in reframing your request. If you have any questions or wish to discuss, please contact me on 02 9911 5841 or by email at rachel.ranjan@asic.gov.au.

Yours sincerely,

Dr Rachel Ranjan

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(Authorised decision-maker pursuant to subsection 23(1) of the FOI Act)