



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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11 July 2024

Me

By email: foi+request-11636-966353a8@righttoknow.org.au

Dear Me,

Freedom of Information Request No. 142-2024
Request consultation process (s 24AB) due to existence of a practical refusal reason

I refer to your email received on 5 July 2024, in which you seek access to the following under the *Freedom of Information Act 1982* (Cth) (**FOI Act**):

I request a fully unredacted copy of the advice 'in February 2019, ASIC advised that it had not been authorised to consider and determine such claims since 2015' referred to at [5.130] of the recent SERC report.

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests.

I advise that your request does not satisfy the requirement in s 15(2)(b) of the FOI Act to provide such information concerning the documents as is reasonably necessary to enable me to identify them. Section 15(2)(b) states that a request must 'provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency to identify it'. This is called a 'practical refusal reason' under s 24AA(1)(b) of the FOI Act. As s 15(2)(b) has not been met ASIC may, in accordance with s 24(1)(b) of the FOI Act, refuse your request after undertaking a request consultation process.

On this basis, it is my intention to refuse access to your request. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under s 24AB of the FOI Act.

Why I intend to refuse your request

You appear to have misquoted paragraph 5.130 of the SERC report. This renders your request unclear and requires clarification.

I have reviewed paragraph 5.130 of the SERC report, being the report of the Senate Economics References Committee's inquiry into ASIC's capacity and capability to respond to reports of alleged misconduct.¹ The final sentence of paragraph 5.130 states the following:

The PTAG stated that, subsequent to lodging a claim under the CDDA scheme with ASIC in February 2019, ASIC advised that it had not been authorised to consider and determine such claims since 2015.

1

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/ASICinvestigation/Report

As such, the full sentence clarifies that ASIC advised PTAG “subsequent to” the lodgment of the claim in February 2019. That is, at some later point in time. The paragraph does not specify exactly when.

The footnote to [5.130] cites the submission made by the Prime Trust Action Group (PTAG). This submission gives eight examples of ASIC stating that it was no longer authorised to determine such claims, ranging from 7 March 2019 to 19 October 2021.

It is therefore possible that you are seeking copies of one of these examples.

I note that one such example is an extract from an ASIC response to a question on notice from the Parliamentary Joint Committee on Corporations and Financial Services (PJC) dated 27 August 2021. The full response is publicly available to download from the PJC webpage, at document 259. I have included a link to the webpage below:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Additional_Documents?docType=Answer%20to%20Question%20on%20Notice

Please consider whether the above response satisfies your request.

In view of the above, I invite you to provide further information about the types of documents you may be seeking in relation to your request.

You have **14 days** to respond to this notice in one of the ways set out below.

Request consultation process

You now have an opportunity to revise your request to enable it to proceed.

Revising your request can mean explaining in more detail the documents you wish to access. For example, by providing more specific information about exactly what documents you are interested in, ASIC will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.

The consultation period runs for **14 days** and starts on the day after you receive this notice. Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request;
- make a revised request;
- indicate that you do not wish to revise your request.

During this period, you are welcome to seek assistance from me to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, I will recommence processing it. (Please note that the time taken to consult with you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request).

If you do not do one of the three things listed above during the consultation period or you do not consult me during this period, your request will be taken to have been withdrawn.

Contact officer

If you would like to revise your request or have any questions, please contact me on 03 9280 4416 or by email at haydar.tuncer@asic.gov.au for assistance.

Yours sincerely

Haydar Tuncer
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