



Knapp and Australian Accounting Standards Board [2014] AICmr 15 (12 February 2014)

Decision and reasons for decision of
Privacy Commissioner, Timothy Pilgrim

Applicant:	Jeffrey Knapp
Respondent:	Australian Accounting Standards Board
Decision date:	12 February 2014
Application number:	MR13/00068
Catchwords:	Freedom of information — whether documents available for purchase by the public in accordance with arrangements made by an agency — (CTH) <i>Freedom of Information Act 1982 s 12(1)(c)</i>

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Summary

1. I set aside the decision of the Australian Accounting Standards Board (AASB) of 20 December 2012 and substitute my decision, under s 12(1)(c) of the *Freedom of Information Act 1982* (Cth) (FOI Act), refusing access on the basis that the requested documents are documents available for purchase by the public in accordance with arrangements made by the Australian Securities Investments Commission (ASIC).

Background

2. On 13 November 2012, Mr Jeffrey Knapp requested access to the following documents under the FOI Act:

...the complete sample of financial reports that ASIC has provided to the Australian Accounting Standards Board for its current research project relating to the characteristics and accounting policies of lodging entities.
3. On 26 November 2012, the AASB refused access to any information. The AASB did not identify the exemptions applied to refuse access under the FOI Act.
4. On 12 December 2012, Mr Knapp applied for internal review of the AASB decision to refuse access to the documents sought. On 20 December 2012, the AASB affirmed its decision to refuse access under s 45 (material obtained in confidence exemption) of the FOI Act.

Decision under review

5. The decision under review is the AASB's internal review decision of the 20 December 2012, to refuse the applicant's request.

Material obtained in confidence exemption (s 45)

6. Section 45(1) of the FOI Act relevantly provides that '[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 a breach of confidence'.
7. The financial reports subject to the FOI request were provided to the AASB from ASIC. As ASIC is an agency for the purposes of the FOI Act, s 45 does not apply.

Documents available for purchase (s 12)

8. The FOI request was specifically for '...financial reports that ASIC has provided to the Australian Accounting Standards Board ...'. The financial reports of applicable entities are lodged with ASIC and available for purchase on ASIC's public register.¹
9. If the documents are available for purchase in accordance with such arrangements, there is no right to obtain access to those documents under the FOI Act.

¹ Available online at <https://connectonline.asic.gov.au/HLP/SearchRegisters/sch-payments/sch-compare-freeandpaid-info/index.htm>

10. Section 12 of the FOI Act states:
- (1) A person is not entitled to obtain access under this Part to:
- ...
- (c) a document that is available for purchase by the public in accordance with arrangements made by an agency.
11. The Australian Information Commissioner has issued Guidelines under s 93A to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. The Guidelines explain that:
- If a request for a document is made, the document must be disclosed unless one of the exemption provisions applies. The right of access is also limited in certain circumstances, such as where a statutory scheme establishes a right of access to a document, subject to a fee or charge (such as a land title register), or an agency has an arrangement that allows a member of the public to purchase the document (see Part 3 of these Guidelines).²
12. In support of his application, Mr Knapp made the following submissions:
- ‘The complete sample of financial reports referred to in my FOI request was provided by ASIC to the AASB in electronic form on machine readable discs. The sample is drawn from a population of financial reports and it covers particular years.’
 - That if s 12 of the FOI Act applies to his request, then it ‘...operates in such a way that I am only entitled to enter into a fishing expedition for the documents provided by ASIC to the AASB.’
 - ‘As you are aware, I cannot purchase documents from ASIC when I am not in a position to identify the document ids that would allow me to purchase the documents.’
13. Although Mr Knapp has indicated that he is unable to clearly identify which financial reports were provided by ASIC to the AASB, this point is irrelevant. If the documents are available for purchase in accordance with arrangements made by an agency, there is no right to obtain access to those documents under the FOI Act.
14. I am satisfied that for the purpose of s 12 of the FOI Act, the documents are available for ‘purchase by the public in accordance with arrangements made by [ASIC]’.

Findings

15. The documents sought by Mr Knapp are available for public access for a fee, via the Public Register on the ASIC website. In accordance with s 12 of the

² Office of the Australian Information Commissioner, *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* [1.28].

FOI Act, Mr Knapp is not entitled to obtain access to the documents under the FOI Act.

Certain operations of agencies exemption (s 47E)

16. AASB, following advice that s 45 could not be applied to documents within the scope of the request, made submissions that s 47E would instead likely apply.
17. However, as I have found that the documents are not subject to the FOI Act, there is no requirement for me to consider the application or not of this exemption.

Decision

18. Under s 55K of the FOI Act, I set aside the AASB's decision of 20 December 2012, and decide, in substitution for that decision, that in accordance with s 12(1)(c) of the FOI Act, the requested documents are available for purchase in accordance with arrangements made by ASIC.

Timothy Pilgrim
Privacy Commissioner

12 February 2014

Review rights

If a party to an IC review is unsatisfied with an IC review decision, they may apply under s 57A of the FOI Act to have the decision reviewed by the Administrative Appeals Tribunal. The AAT provides independent merits review of administrative decisions and has power to set aside, vary, or affirm an IC review decision.

An application to the AAT must be made within 28 days of the day on which the applicant is given the IC review decision (s 29(2) of the *Administrative Appeals Tribunal Act 1975*). An application fee may be payable when lodging an application for review to the AAT. The current application fee is \$816, which may be reduced or may not apply in certain circumstances. Further information is available on the AAT's website (www.aat.gov.au) or by telephoning 1300 366 700.