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Our Ref: ENF2014/20008
Your Ref: FOI271

24 November 2014

email: [REDACTED]

Dear [REDACTED]

Freedom of Information Request

I refer to your request under the *Freedom of Information Act 1982* (FOI Act) numbered 271 in which you seek the following:

All documentation about and concerning Matthew Nguyen Littauer. Matthew Littauer was a Vietnamese-American consultant, stabbed to death 12-08-2004 in Tokyo's Roppongi district. Littauer was director of Wright Global in 2004 and was part responsible for starting in early 2003 the Trio Capital fund. Including documentation about and concerning;

- Christopher Andrew Coppola - (deceased) based in Pasig, Manila, Philippines;
- Jack Flader;
- Pangasinense Amador Apungan Pastrana;
- Regis Possino;
- Sherman Mazur and
- Adnan Khashoggi.

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

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

Relevant legislation

Section 25(1) provides

(1) Nothing in this Act shall be taken to require an agency or Minister to give information as to the existence or non-existence of a document where information as to the existence or non-existence of that document, if included in a document of an agency, would cause the last-mentioned document to be:

- (a) an exempt document by virtue of section 33 or subsection 37(1) or 45A(1); or*
- (b) an exempt document to the extent referred to in subsection 45A(2) or (3).*

Section 33(a)(iii) provides:

A document is an exempt document if disclosure of the document under this Act:

- (a) would, or could reasonably be expected to, cause damage to:*
 - (i) the security of the Commonwealth;*
 - (ii) the defence of the Commonwealth; or*
 - (iii) the international relations of the Commonwealth;*

Section 37(1) provides:

- (1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
 - (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;*
 - (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or*
 - (c) endanger the life or physical safety of any person.*

Section 37(2) provides:

- (2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
 - (a) prejudice the fair trial of a person or the impartial adjudication of a particular case;*
 - (b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or*
 - (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.*

Section 45 provides:

- (1) 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.*

- (2) *Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:*
- (a) *a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or*
 - (b) *an agency, the Commonwealth or Norfolk Island.*

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:

- (a) *prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) *prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;*
- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

Section 47F(1) provides

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

Section 22

Section 22 of the FOI Act provides that if an agency or minister decides to refuse access to a document on the ground that it is exempt, the agency or minister must consider whether it would be reasonably practicable to prepare an edited copy of the document, which has been modified by relevant deletions, for release to the applicant. If the agency or minister decides that giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, consideration should be given to preparing an edited copy for release to the applicant. The decision maker should consider the nature and extent of the modifications required, the resources available to modify the document and whether the applicant would accept an edited copy.

Decision

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** on the attached schedule on the grounds that the documents are exempt from release for the reasons set out below.

I advise also that there may be other documents to which s25 applies. I neither confirm nor deny the existence of such documents, but if they do exist they would be exempt under s33, or s37(1).

Documents exempt under s33(a)(iii)

Section 33 of the FOI Act, in particular paragraph 33(a)(iii), provides that a document is exempt if release of such a document would or could reasonably be expected to cause damage to the international relations of the Commonwealth. Disclosure of such a document would constitute a breach of confidentiality between ASIC and foreign governments and agencies, which would or could reasonably be expected to cause damage to the international relations of the Commonwealth. This damage could include damage to Australia's international reputation, lessening the confidence which another country would place on the government of Australia, and damage to ongoing mutual assistance and cooperation.

Documents exempt under s37(1)

This is an ongoing investigation. Section 37(1) of the FOI Act provides that documents are exempt because their disclosure would or could reasonably be expected to prejudice the conduct of an ongoing investigation of a breach or possible breach of the law.

Documents exempt under s37(2)(b)

Section 37(2)(b) exempts documents which, if released would, or could reasonably be expected to disclose lawful methods or procedures of APRA, for preventing, detecting, investigating or dealing with matters arising out of breaches of the law, and a reasonable expectation or reasonable risk of prejudice to the effectiveness of that investigative method or procedure.

Documents exempt under s45

Section 45(1) of the FOI Act provides that a document is exempt if its disclosure would found an action by a person for breach of confidence. An agency can keep confidential information which has been communicated to it in circumstances giving rise to the obligation of confidence. An obligation of confidentiality may be express or implied. The information in these documents was provided to ASIC upon the understanding that ASIC would preserve its confidentiality.

Documents exempt under s47E

This section conditionally exempts documents where disclosure would, or could reasonably be expected to, prejudice or have a substantial effect on an agency's operations. I consider this exemption applies in respect to the information and documents received by ASIC from another federal agency.

Documents exempt under s47F

This section conditionally exempts a document if its disclosure under the FOI would involve the unreasonable disclosure of personal information of any person. I consider this exemption applies in respect of s19 transcripts.

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 release of the document would, on balance, be contrary to the public interest.

In particular, I have had regard to the following factors outlined in section 11B(3) as being factors favouring access to the documents in the public interest:

1. disclosure would promote the objects of the FOI Act (including all matters set out in sections 3 and 3A).
2. contribute to the administration of justice generally,
3. Contribute to the enforcement of the criminal law.

Against the above factors must be balanced the factors against disclosure. The FOI Act does not specify any factors against disclosure in the public interest however the FOI Guidelines issued by the OAIC include a non-exhaustive list of thirteen such factors. Of these factors, I consider the following are relevant to this decision:

- could reasonably be expected to prejudice security or law enforcement; and, disclosure could reasonably be expected to prejudice the administration of justice generally
- could reasonably be expected to impede the flow of information to the police or another law enforcement or regulatory agency
- could reasonably be expected to prejudice an agency's ability to obtain confidential information
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

Determining whether disclosure would be contrary to the public interest requires that I weigh the public interest in the public being informed of the processes of its government agencies against the public interest in the proper workings of those agencies. There is a public expectation that ASIC is able to perform its functions in a manner to determine the most appropriate regulatory outcome and this public interest imports a need for confidentiality both as it applies to intra and inter agency communications. If this confidentiality were to be undermined it would, in my view, be detrimental to ASIC's operations and responsibilities.

I have considered whether, pursuant to section 22 of the FOI Act, it is possible to release the documents with deletions such that the documents would no longer be exempt or contain irrelevant matter.

I have found that it is not possible to release the documents subject to deletions such that the documents would no longer be exempt.

Review Rights

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

In the event that you are dissatisfied with the decision:

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

Yours faithfully



Paula O'Regan

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

Schedule of Documents

Schedule 1

No.	barcode	Document type	Date	Decision on access	Relevant section
1	S02286052	Subscription and Shareholders Deed	31/10/03	Exempt	37(1)
2	S02286049	Subscription and Shareholders Deed	3/11/03	Exempt	37(1)
3	S02065032	Email Flader to ASIC	8/10/09	exempt	37(1) 45
4	S02044303	Timeline of Appointment of Directors		Release	
5	S02356290	Timeline of Appointment of Directors		Release	
6	S02200229	Meeting Agenda Astarra Capital Ltd	12/08/04	exempt	37(1) 37(2)(b) 47E
7	S02200231	Meeting Agenda Astarra Capital Ltd	13/09/04	exempt	37(1) 37(2)(b) 47E
8	S02200228	Meeting Minutes Astarra Capital Ltd		exempt	37(1) 37(2)(b) 47E
9	S02200217	Meeting Minutes Tolhurst Capital Ltd	5/11/03	exempt	37(1) 37(2)(b) 47E
10	S02200219	Meeting Minutes Tolhurst Capital Ltd	11/12/03	exempt	37(1) 37(2)(b) 47E
11	S02200220	Meeting Minutes Tolhurst Capital Ltd	11/12/03	exempt	37(1) 37(2)(b) 47E
12	S02200305	Meeting Minutes Tolhurst Capital Ltd	28/01/04	exempt	37(1) 37(2)(b) 47E
13	S02200221	Meeting Minutes Tolhurst Capital Ltd	29/01/04	exempt	37(1) 37(2)(b) 47E
14	S02200307	Meeting Minutes Tolhurst Capital Ltd	11/03/04	exempt	37(1) 37(2)(b) 47E
15	S02200308	Meeting Minutes Tolhurst Capital Ltd	17/03/04	exempt	37(1) 37(2)(b) 47E
16	S02200223	Meeting Minutes Tolhurst Capital Ltd	18/03/04	exempt	37(1) 37(2)(b) 47E

17	S02200224	Meeting Minutes Tolhurst Capital Ltd	2/04/04	exempt	37(1) 37(2)(b) 47E
18	S02200225	Meeting Minutes Tolhurst Capital Ltd	20/04/04	exempt	37(1) 37(2)(b) 47E
19	S02200310	Meeting Minutes Astarra Capital Ltd	12/05/04	exempt	37(1) 37(2)(b) 47E
20	S02200226	Meeting Minutes Astarra Capital Ltd	20/05/04	exempt	37(1) 37(2)(b) 47E
21	S02200227	Meeting Minutes Astarra Capital Ltd	24/06/04	exempt	37(1) 37(2)(b) 47E
22	S02200230	Meeting Minutes Astarra Capital Ltd	9/09/04	exempt	37(1) 37(2)(b) 47E
23	S02200232	Meeting Minutes Astarra Capital Ltd	23/09/04	exempt	37(1) 37(2)(b) 47E
24	S02200233	Meeting Minutes Astarra Capital Ltd	8/10/04	exempt	37(1) 37(2)(b) 47E
25	S02200234	Meeting Minutes Astarra Capital Ltd	13/10/04	exempt	37(1) 37(2)(b) 47E
26	S02200236	Meeting Minutes Astarra Capital Ltd	25/11/04	exempt	37(1) 37(2)(b) 47E
27	S02200320	Meeting Minutes Astarra Capital Ltd	19/01/05	exempt	37(1) 37(2)(b) 47E
28	S01954275	ASIC Notice	4/12/09	exempt	37(1)
29	S02039572	Presentation	1/07/04	Exempt	37(1) 47E
30	S02039585	Presentation	1/07/04	Exempt	37(1) 47E
31	S02054676	Report		Exempt	37(1) 47E
32	S02184335	Audit Report	30/09/05	exempt	37(1)
33	S02056024	Balance sheet	1/06/09	exempt	37(1)
34	S01540141	Transcript of s19 examination	8/10/09	exempt	37(1) 45 47F

35	S02044222	Transcript of s19 examination	8/10/09	exempt	37(1) 45 47F
36	S01772426	Transcript of s19 examination	5/11/09	exempt	37(1) 45 47F
37	S02050259	Transcript of s19 examination	13/11/09	exempt	37(1) 45 47F
38	S02044266	Transcript of voluntary interview	22/12/09	exempt	37(1) 45 47F
39	S02044227	Transcript of s19 examination	2/02/10	exempt	37(1) 45 47F
40	S02044240	Transcript of s19 examination	2/02/10	exempt	37(1) 45 47F
41	S02044223	Transcript of s19 examination	9/02/10	exempt	37(1) 45 47F
42	S02044265	Transcript of s19 examination	9/02/10	exempt	37(1) 45
43	S02044226	Transcript of s19 examination	22/02/10	exempt	37(1) 45 47F
44	S02044316	Transcript of s19 examination	22/02/10	exempt	37(1) 45 47F
45	S02418104	Investment Committee Minutes	19/1/05	Exempt	37(1)
46	S02218543	Email attaching draft statement	2/08/11	exempt	37(1) 45 47F
47	S02218544	Email attaching draft statement	18/08/11	exempt	37(1) 45 47F
48	S02218545	Email attaching draft statement	26/08/11	exempt	37(1) 45 47F
49	S02218546	Email attaching draft statement	8/09/11	exempt	37(1) 45 47F
50	S02242941	Statement - Witness	15/06/11	Exempt	37(1) 45 47F
51	S02242942	Statement - Witness	22/06/11	Exempt	37(1) 45 47F

52	S02218536	Statement - Witness	12/09/11	exempt	37(1) 45 47F
53	S02057300	Transcript of s19 examination	26/04/10	exempt	37(1) 45 47F
54	S02097183	Transcript of s19 examination	11/05/10	exempt	37(1) 45 47F
55	S02057301	Transcript of s19 examination	30/04/12	exempt	37(1) 45 47F



S02044303

TIMELINE OF APPOINTMENT OF DIRECTORS

Name	Appointment Date	Resignation Date	Reappointment Date
John Richard Henry	14.03.2002	27.03.2003	
Ross Templeton Hall	26.02.1992	05.08.2003	
David William De Campo	15.12.2002	05.11.2003	
Peter Bennett Smith	08.05.2000	05.11.2003	
Ian Meredith Johnson	17.01.2002	18.03.2004	
Steven James Harrison	06.09.1991	18.03.2004	
Matthew Littauer	05.11.2003	02.12.2004	
Lorenzo Patrick Macolino	05.11.2003	17.12.2004	
Michael Grace	05.11.2003	17.12.2004	
Terry Hallinan	05.11.2003	17.12.2004	
Robert William Horgan	17.12.2004	09.03.2005	
David Millhouse	05.11.2003	12.10.2005	
Michael James Anderson	24.03.2005	12.10.2005	
Shawn Richard	05.11.2003	15.11.2005	
Cameron Anderson	05.11.2003	15.11.2005	
• David Ronald Andrews	15.11.2005	15.01.2006	13.07.2006
Kurt William Groeneveld	15.11.2005	24.04.2007	
John Godfrey	04.02.2005	27.06.2007	
John Gerard Owen Harte	16.01.2006	31.05.2008	
• Rex John Phillpott (Secretary)	12.10.2005		
• Natasha Beck	18.06.2008		
• David O'Bryen	27.06.2007		
• Keith Rex Finkelde	24.04.2007		

Alternate Directors

Name	Appointment Date	Resignation Date	Reappointment Date
Ross William Ellis	02.04.2007	27.06.2007	
Michael Grace	17.12.2004	12.10.2005	
Michael James Anderson	03.08.2005	12.10.2005	



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Peter Bennett Smith	08.05.2000	05.11.2003	
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Steven James Harrison	06.09.1991	18.03.2004	
Matthew Littauer	05.11.2003	02.12.2004	
Lorenzo Patrick Macolino	05.11.2003	17.12.2004	
Michael Grace	05.11.2003	17.12.2004	
Terry Hallinan	05.11.2003	17.12.2004	
Robert William Horgan	17.12.2004	09.03.2005	
David Millhouse	05.11.2003	12.10.2005	
Michael James Anderson	24.03.2005	12.10.2005	
Shawn Richard	05.11.2003	15.11.2005	
Cameron Anderson	05.11.2003	15.11.2005	
David Ronald Andrews	15.11.2005	15.01.2006	13.07.2006
Kurt William Groeneveld	15.11.2005	24.04.2007	
John Godfrey	04.02.2005	27.06.2007	
John Gerard Owen Harte	16.01.2006	31.05.2008	
Rex John Phillpott (Secretary)	12.10.2005		
Natasha Beck	18.06.2008		
David O'Bryen	27.06.2007		
Keith Rex Finkelde	24.04.2007		

Alternate Directors

Name	Appointment Date	Resignation Date	Reappointment Date
Ross William Ellis	02.04.2007	27.06.2007	
Michael Grace	17.12.2004	12.10.2005	
Michael James Anderson	03.08.2005	12.10.2005	