



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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Mr John Telford and Mrs Jenny Butler
By email only: johnnt@learth.net

Our Reference: FOI 163-2022
Your Reference: VOFF FOI 532

27 September 2022

Dear Mr Telford and Mrs Butler

Freedom of Information Request No 163-2022 - Notice of Decision

I refer to your email received by the Australian Securities and Investments Commission (**ASIC**) on 31 August 2022 in which you seek access under the *Freedom of Information Act 1982 (FOI Act)* to documents in the possession of ASIC.

Your request sought access to:

Part 1.

Document of any response to Mr David Millhouse's 2005 complaint letter about Astarra/ Trio Capital of which was delivered to ASIC and the Trio directors.

Part 2.

Also, any other responses to complaints made about Astarra / Trio Capital, (held by ASIC) from the period Jan 2006 to July 2009.

Searches – Part 1

For part 1 of your request, I carried out searches on ASIC's digital database. I searched for the 2005 complaint letter that you mention, so that I could also search for any ASIC response to it.

Between 9 September 2022 and 16 September 2022, I searched ASIC's electronic databases, including the following:

- ASIC search
- where reports of misconduct (complaints) were recorded in 2005
- where correspondence to the Commission used to be recorded

I also looked at the searches carried out previously in one of your other FOI requests which referred to the 2005 complaint letter (ASIC reference: 009-2021).

During my searches, I used the following search terms:

- Trio Capital
- Astarra
- David Millhouse
- Millhouse

I did not locate any documents falling into the terms of part 1 of your request.

Searches – Part 2

For part 2 of your request, I searched ASIC's database for reports of misconduct received between 2006 and 2009 for the following entities:

- Trio Capital Limited
- Astarra Strategic Fund

For the time frame 2006 – 2009, I identified two reports of misconduct, both in 2008, falling into the terms of your request.

I checked our digital records and requested a copy of the physical file for the 2 reports of misconduct for 2008 to locate ASIC's response.

For one of the 2008 reports of misconduct, I did not identify a written ASIC response to the misconduct reporter about the outcome of their report.

For the remaining 2008 report of misconduct, I located an unsigned copy on the file of ASIC's response dated 2 September 2008.

This is the only document that I have located that falls into the terms of your request.

Decision and reasons for decision

I am an officer authorised under section 23 of the FOI Act to make decisions about requests to access documents.

I have decided to grant access in part to the 1 document (being ASIC's response dated 2 September 2008).

In reaching my decision, I have considered the following:

- the content of the document that falls within the scope of your request
- the FOI Act (specifically sections 22, 24A, 37, 47E(d) and 47F)
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**)

My reasons for my decision are as follows:

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

Paragraph 37(1)(b) of the FOI Act provides

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

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;

ASIC treats reports of misconduct in confidence. I am satisfied that the release of some information would allow you to ascertain the identity of a confidential source of information who chose to report misconduct to ASIC.

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

Paragraph 47E(d) states:

A document is conditionally exempt if its disclosure under this 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 document includes intelligence gathered from a voluntary source. ASIC receives approximately 10,000 reports of misconduct each year and we advise misconduct reporters that we treat their reports as confidential.

The FOI Guidelines at 6.122 provide:

The exemption may also apply to documents that relate to a complaint made to an investigative body. The disclosure of this type of information could reasonably affect the willingness of people to make complaints to the investigative body, which would have a substantial adverse effect on the proper and efficient conduct of the investigative body's operations.

It is essential for ASIC's operations that we do not lose valuable intelligence sources out of fear that the identify and information provided will later be released.

This is a conditional exemption and the public interest test applies.

Section 47F – Public interest conditional exemption – personal privacy

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).

I have decided that parts of the document are conditionally exempt under section 47F of the FOI Act.

The exempt information includes personal information about persons complained about and the person who voluntarily contacted ASIC with information.

The personal information can include an opinion. In determining whether disclosure would involve the unreasonable disclosure of personal information, an agency must consider 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
- the availability of the information from publicly accessible sources
- any other matters that the agency considers relevant.

I have considered the above factors. I have also considered:

- the nature of the information about misconduct and how it was obtained
- the current relevance of the information, given the document is from 2008
- the likelihood that release would cause stress on the third parties over fourteen years later
- the outcome of ASIC's inquiries, noting that as set out in the response, we decided not to take further action

- the FOI Act does not control or restrict any later use or dissemination of information released under the FOI Act

I have determined that disclosure of the personal information would be unreasonable.

This is a conditional exemption and the public interest test applies.

Public Interest

The FOI Act provides that access must be given to a conditionally exempt document unless access would be contrary to the public interest.

As required by section 11A of the FOI Act I have considered whether release of the conditionally exempt documents, as identified in the schedule, would, on balance, be contrary to the public interest.

I have considered the following factors outlined in section 11B(3) as being factors favouring access to the documents 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).
2. Access to the documents would inform debate on a matter of public importance.
3. Access to 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 objects of the FOI Act include providing for a right of access to information in the possession of Commonwealth government agencies and promoting accountability and transparency in government decision making.

I acknowledge that for factor 2, this issue is important to you, but I do not consider that access to the deleted information from the document would overall inform debate on a matter of public importance.

I also note that for factor 4, your personal information is not recorded on the document.

The FOI Act does not specify any factors against disclosure in the public interest, however, the FOI Guidelines include a list of factors. Based on the FOI Guidelines, I consider that four factors are relevant to this decision because disclosure could reasonably be expected to:

- prejudice the fair treatment of some individuals where the information concerns allegations of misconduct or unlawful conduct
- impede the flow of information to ASIC
- prejudice ASIC's ability to obtain confidential information
- prejudice ASIC's ability to obtain similar information in the future

I have weighed the relevant factors to determine where the public interest lies and whether disclosure would be contrary to the public interest. I have not considered the factors outlined in section 11B(4) of the FOI Act.

In my view, the factors against disclosure of the conditionally exempt material in the document outweigh the factors in favour of disclosure. This is because the public benefit that lies in disclosure is outweighed by the adverse effects on ASIC's operational activities and regulatory responsibilities.

I am satisfied that the 2 September 2008 document is exempt under sections 47E(d) and 47F of the FOI Act. This is as well as the section 37 exemption.

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

I detailed my searches earlier and I did not identify a document falling into part 1 of your request and I did not locate a written response showing ASIC's outcome to the other 2008 misconduct report.

I am satisfied that all reasonable steps were taken to find the documents and based on my searches, I am satisfied that the document you requested for part 1 of your request does not exist in ASIC's possession.

I am also satisfied that a written response to the misconduct reporter for the other 2008 report does not exist.

Subsection 24A(1) provides:

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

Section 22

Section 22(2) of the FOI Act requires an agency to give an applicant access to an edited copy of a document with the exempt matter deleted if it is reasonably practicable for the agency to prepare an edited copy, having regard to:

- the nature and extent of the modifications (s22(1)(c)(i)); and
- the resources available to modify the document (s22(1)(c)(ii)).

I have decided to edit the document and it is released in part.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An Information Commissioner review application must be made in writing within 60 days of the date of this letter, and be lodged online through the Oaic smart form or as follows:
email: foidr@oaic.gov.au
post: GPO Box 5218 Sydney NSW 2001

Right to complain

You may complain to the Oaic at the contact details above about ASIC's conduct in the handling of your request.

If you have any questions, please contact me by email at fiona.crowe@asic.gov.au

Yours sincerely



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

Schedule FOI 163-2022

Date	Description	Decision	Relevant sections
2/9/2008	Unsigned file copy of an ASIC letter to a misconduct reporter	Released in part	22, 37(1)(b), 47E(d), 47F