

Our Ref:
Your Ref: FOI No. 357



25 May 2015

Level 5, 100 Market Street, Sydney
GPO Box 9827 Sydney NSW 2001
DX 653 Sydney

Telephone: (02) 9911 2000
Facsimile: (02) 9911 2414
ASIC website: www.asic.gov.au

Mr Paul Matters
C/o 10 Dixon Street
FAIRY MEADOWS NSW 2519

Email: johnt@1earth.net

Mr Matters

Request Under the Freedom of Information Act 1982 For Access to Documents

I refer to your request under the Freedom of Information Act 1982 (FOI Act) received by this office on 23 April 2015 in which you sought access to:

"documents of ASIC's or third party investigation (Securities Exchange Commission in the US) initially commenced in 2010 into tracking of the \$123m from the Astarra Strategic Fund."

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

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

Relevant Legislation

Subsections 25(1) and (2) of the FOI Act provide as follows:

- (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).*

- (2) *If a request relates to a document that is, or if it existed would be, of a kind referred to in subsection (1), the agency or Minister dealing with the request may give notice in writing to the applicant that the agency or the Minister (as the case may be) neither confirms nor denies the existence, as a document of the agency or an official document of the Minister, of such a document but that, assuming the existence of such a document, it would 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 of the FOI Act 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; or*
- (b) *would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.*

Subsections 37(1) and (2) of the FOI Act provide:

- (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.*
- (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.*
 - (a) *administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

Section 47G(1) of the FOI Act provides that:

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*
 - (a) *would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs;*

Section 22

Section 22 of the FOI Act provides that where an agency or Minister decides not to grant access to a document on the grounds that it is an exempt document or that to grant access to a document would disclose information that would reasonably be regarded as irrelevant to the

request: and, "it is possible for the agency....to make a copy of the document with such deletions that the copywould not be an exempt document: and ..would not disclose such information....and it is reasonably practical for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and resources available for the work, to make such a copy...the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make and grant access to such a copy".

Decision

I advise that I have decided to release the document marked "Release" on the attached Schedule.

I advise that I have decided not to release the documents marked "Exempt" in the attached Schedule, under your request, on the grounds that the documents are exempt from release for the following reasons:

Documents exempt under s37(1)(a)

Section 37(1)(a) 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. ASIC's investigation arising from the collapse of Trio is ongoing and I am satisfied that release of the documents would prejudice that investigation by disclosing the extent and progress of our inquiries.

Documents exempt under s37(2)(b)

Section 37(1)(a) of the FOI Act provides that documents are exempt if release could 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. I am satisfied that the release of documents obtained from AUSTRAC and analysis of the data would prejudice the effectiveness of a lawful method of detecting and investigating breaches of the law.

Documents exempt under s 47G(1)(a)

The release of the documents would or could reasonably be expected to affect an organisation in respect of its lawful business, commercial or financial affairs. Client confidentiality is a key aspect of a particular organisation's business. If this organisation is unable to maintain client confidentiality then this could undermine client confidence in that organisation and lead to a loss of business.

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. Section 47G(1)(a) of the FOI Act is a conditional exemption.

The circumstances surrounding the collapse of Trio Capital Ltd (in liq) (Trio) have gained public attention. While I am aware of the public interest in the Trio matter, given all the circumstances and the nature of the documents (ie: documents would generally be subject to client banker confidentiality) subject to the conditional exemption I find that the public

interest in the disclosure of information is outweighed by the public interest in maintaining the confidentiality of these documents.

I have considered whether, pursuant to section 22 of the FOI Act, access should be granted to part of the aforementioned exempt documents. For the reasons above, explaining the basis of the exemptions applied in respect to the documents, I find that the documents are "exempt documents" as defined by the FOI Act. I further find that it would not be possible to make a copy of the documents with such deletions that the documents would not be exempt documents.

Pursuant to section 25 of the FOI Act, I neither confirm nor deny whether there are any additional documents in addition to those listed in the schedule that may fall within the scope of your request. In the event that any such documents do exist, they would be exempt by virtue of:

- section 33 of the FOI Act, in particular paragraph 33(a)(iii), as 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, if it exists, 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.

and/or

- section 37(1)(a) of the FOI Act, as release of such a document would or could reasonably be expected to prejudice the conduct of an investigation of a breach or possible breach of the law.

Subsection 25(1) of the FOI Act provides that nothing in the FOI Act is to be taken as requiring an agency to give information about the existence or non-existence of a document where information as to its existence or non-existence, if included in a document, would cause that document to be exempt under section 33 or subsection 37(1). Further, subsection 25(2) of the FOI Act enables an agency to give a notice neither confirming nor denying the existence in its possession of a requested document, of a kind mentioned in subsection 25(1).

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 Commonwealth Ombudsman in respect to the conduct of ASIC in the handling of this request. To do so, you can contact the Ombudsman's office either: by e-mail to ombudsman@ombudsman.gov.au, by letter to GPO Box 442 Canberra ACT 2601, or by fax to (02) 6276 0123.

Yours faithfully



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

SCHEDULE OF DOCUMENTS

No	Description of document	Date of notice	Decision on access	Relevant section
1.	Statement of Facts: Shawn Richard		Release (copy provided previously)	
2.	Documents produced in response to ASIC notice number: S01530471 to NAB (167 documents)	12/11/09	Exempt	37(1)(a) 47G(1)(a)
3.	Documents produced in response to ASIC notice number: S01530473 to ANZ (158 documents)	12/11/09	Exempt	37(1)(a) 47G(1)(a)
4.	Documents produced in response to ASIC notice number: S01530476 to ANZ (49 documents)	16/11/09	Exempt	37(1)(a) 47G(1)(a)
5.	Documents produced in response to ASIC notice number: S01530477 to NAB (12 documents)	16/11/09	Exempt	37(1)(a) 47G(1)(a)
6.	Documents produced in response to ASIC notice number: S01546287 to NAB (13 documents)	27/01/10	Exempt	37(1)(a) 47G(1)(a)
7.	Documents produced in response to ASIC notice number: S02014307 to National Australia Trustees Ltd (7 documents)	08/10/09	Exempt	37(1)(a) 47G(1)(a)
8.	Documents produced in response to ASIC notice number: S02014329 to ANZ (12 documents)	16/10/09	Exempt	37(1)(a) 47G(1)(a)
9.	Documents produced in response to ASIC notice number: S02016682 to ANZ (141 documents)	05/02/10	Exempt	37(1)(a) 47G(1)(a)
10.	Documents produced in response to ASIC notice number: S02044001 to National Australia Trustees Ltd (1040 documents)	22/10/09	Exempt	37(1)(a) 47G(1)(a)

11.	Documents produced in response to ASIC notice number: S02044022 to ANZ (1447 documents)	03/11/09	Exempt	37(1)(a) 47G(1)(a)
12.	Documents produced in response to ASIC notice number: S01923830 to Westpac (24 documents)	11/02/10	Exempt	37(1)(a) 47G(1)(a)
13.	Documents produced in response to ASIC notice number: S01546398 to Citigroup Pty Ltd (17 documents)	16/02/10	Exempt	37(1)(a) 47G(1)(a)
14.	Documents produced in response to ASIC notice number: S02016683 to St George Bank Limited (8 documents)	05/02/10	Exempt	37(1)(a) 47G(1)(a)
15.	Documents produced in response to ASIC notice number: S02009722 to CBA (9 documents)	16/04/10	Exempt	37(1)(a) 47G(1)(a)
16.	Documents produced in response to ASIC notice number: S02009650 to CBA (7 documents)	08/04/10	Exempt	37(1)(a) 47G(1)(a)
17.	Documents produced in response to ASIC notice number: S02009095 to Westpac (2 documents)	23/10/09	Exempt	37(1)(a) 47G(1)(a)
18.	Documents produced in response to ASIC notice number: S02009086 to Westpac (3 documents)	22/10/09	Exempt	37(1)(a) 47G(1)(a)
19.	Documents produced in response to ASIC notice number: S01929845 to Westpac (58 documents)	01/12/09	Exempt	37(1)(a) 47G(1)(a)
20.	Documents produced in response to ASIC notice number: S01929812 to Westpac (14 documents)	20/11/09	Exempt	37(1)(a) 47G(1)(a)
21.	Documents produced in response to ASIC notice number: S01929811 to Westpac (103 documents)	20/11/09	Exempt	37(1)(a) 47G(1)(a)

22.	Documents produced in response to ASIC notice number: S01929706 to St George Bank Limited (26 documents)	19/11/09	Exempt	37(1)(a) 47G(1)(a)
23.	Documents produced in response to ASIC notice number: S01929705 to Macquarie Bank Limited (12 documents)	19/11/09	Exempt	37(1)(a) 47G(1)(a)
24.	Documents produced in response to ASIC notice number: S01929702 to Westpac (461 documents)	19/11/09	Exempt	37(1)(a) 47G(1)(a)
25.	Documents produced in response to ASIC notice number: S01929696 to Westpac (107 documents)	13/11/09	Exempt	37(1)(a) 47G(1)(a)
26.	Documents produced in response to ASIC notice number: S01923978 to Westpac (1 document)	18/05/10	Exempt	37(1)(a) 47G(1)(a)
27.	Documents produced in response to ASIC notice number: S1923954 to CBA (11 documents)	26/03/10	Exempt	37(1)(a) 47G(1)(a)
28.	Documents produced in response to ASIC notice number: S01923942 to Westpac (3 documents)	05/03/10	Exempt	37(1)(a) 47G(1)(a)
29.	Documents produced in response to ASIC notice number: S01929695 to St George Bank Limited (17 documents)	13/11/09	Exempt	37(1)(a) 47G(1)(a)
30.	Documents produced in response to ASIC notice number: S01923933 to Westpac (27 documents)	05/03/10	Exempt	37(1)(a) 47G(1)(a)
31.	Documents produced in response to ASIC notice number: S01923813 to St George Bank Limited (279 documents)	09/02/10	Exempt	37(1)(a) 47G(1)(a)
32.	Documents produced in response to ASIC notice number: S01923812 to St George Bank Limited (5 documents)	09/02/10	Exempt	37(1)(a) 47G(1)(a)

33.	Documents produced in response to ASIC notice number: S01685948 to St George Bank Limited (48 documents)	23/10/09	Exempt	37(1)(a) 47G(1)(a)
34.	Documents produced in response to ASIC notice number: S01685947 to St George Bank Limited (3 documents)	21/10/10	Exempt	37(1)(a) 47G(1)(a)
35.	Documents produced in response to ASIC notice number: S01546462 to St George Bank Limited (1 document)	18/02/10	Exempt	37(1)(a) 47G(1)(a)
36.	Documents produced in response to ASIC notice number: S01546396 to St George Bank Limited (4 documents)	15/02/10	Exempt	37(1)(a) 47G(1)(a)
37.	Documents produced in response to ASIC notice number: S0153994 to St George Bank Limited (80 documents)	26/11/09	Exempt	37(1)(a) 47G(1)(a)
38.	Documents produced in response to ASIC notice number: S01530474 to CBA (6 documents)	12/11/09	Exempt	37(1)(a) 47G(1)(a)
39.	Documents produced in response to ASIC notice number: S01530592 to CBA (2 documents)	24/11/09	Exempt	37(1)(a) 47G(1)(a)
40.	Documents produced in response to ASIC notice number: S01530472 to NAB (383 documents)	12/11/09	Exempt	37(1)(a) 47G(1)(a)
41.	Documents produced in response to ASIC notice number: S01923939 to Citigroup (12 documents)	05/03/10	Exempt	37(1)(a) 47G(1)(a)
42.	Documents produced in response to ASIC notice number: S01929701 to NAB (127 documents)	19/11/09	Exempt	37(1)(a) 47G(1)(a)
43.	Documents produced in response to ASIC notice number: S02009651 to ANZ (1 document)	08/04/20 10	Exempt	37(1)(a) 47G(1)(a)

44.	Documents produced in response to ASIC notice number: S02009723 to ANZ (9 documents)	16/04/2010	Exempt	37(1)(a) 47G(1)(a)
45.	Documents produced in response to ASIC notice number: S02044299 to ANZ (7 documents)	16/04/2010	Exempt	37(1)(a) 47G(1)(a)
46.	Worksheet analysis of AUSTRAC Data (Astarra Asset Management)	undated	Exempt	37(1)(a) 37(2)(b)
47.	Worksheet analysis of AUSTRAC Data (Astarra Capital)	undated	Exempt	37(1)(a) 37(2)(b)
48.	Worksheet analysis of AUSTRAC Data (Additional Wright Transactions)	undated	Exempt	37(1)(a) 37(2)(b)
49.	Worksheet analysis of AUSTRAC Data (Astarra and Absolute Alpha)	undated	Exempt	37(1)(a) 37(2)(b)
50.	Worksheet analysis of AUSTRAC Data (Astarra all from July07)	undated	Exempt	37(1)(a) 37(2)(b)
51.	Worksheet analysis of AUSTRAC Data	undated	Exempt	37(1)(a) 37(2)(b)
52.	Worksheet analysis of AUSTRAC Data	undated	Exempt	37(1)(a) 37(2)(b)
53.	Worksheet analysis of AUSTRAC Data	undated	Exempt	37(1)(a) 37(2)(b)
54.	Worksheet analysis of AUSTRAC Data (To Wright outside period)	undated	Exempt	37(1)(a) 37(2)(b)
55.	Worksheet analysis of AUSTRAC Data (Wright outside period)	undated	Exempt	37(1)(a) 37(2)(b)
56.	Worksheet analysis of AUSTRAC Data (Astarra Capital)	undated	Exempt	37(1)(a) 37(2)(b)
57.	AUSTRAC Report: No. 167626428	21/9/2009	Exempt	37(1)(a) 37(2)(b)
58.	AUSTRAC Report: No. 153818451	22/9/2009	Exempt	37(1)(a) 37(2)(b)

59.	AUSTRAC Report: No. 163406736	23/9/2009	Exempt	37(1)(a) 37(2)(b)
60.	AUSTRAC Report: No. 166858358	21/9/2009	Exempt	37(1)(a) 37(2)(b)