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Our Reference:
Your Reference: No 381

15 September 2015

Email: [REDACTED]

Dear [REDACTED]

**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 20 August 2015 in which you sought access to:

"Please provide documents confirming the underlying funds were controlled by Jack Flader and or GCSL.

Please provide documents to support the investments were not made into Flader controlled funds

Please provide documents showing what funds are referred to by ASIC that were invested into the ARP Growth Fund and documentation indicating the movement of funds invested in the ARP Growth Fund from 2006 to 2007".

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

Relevant Legislation

Section 25 of the FOI Act provides as follows:

25 Information as to existence of certain documents

- (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).*
- (3) *If a notice is given under subsection (2) of this section:*
- (a) *section 26 applies as if the decision to give the notice were a decision referred to in that section; and*
 - (b) *the decision is taken, for the purposes of Part VI, to be a decision refusing to grant access to the document in accordance with the request referred to in subsection (2) of this section, for the reason that the document would, if it existed, be:*
 - (i) *an exempt document by virtue of section 33 or subsection 37(1) or 45A(1); or*
 - (ii) *an exempt document to the extent referred to in subsection 45A(2) or (3).*

Section 33 of the FOI Act provides:

33 Documents affecting national security, defence or international relations

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.*

Section 37 of the FOI Act provides as follows:

37 Documents affecting enforcement of law and protection of public safety

- (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.*
- (2A) *For the purposes of paragraph (1)(b), a person is taken to be a confidential source of information in relation to the enforcement or administration of the law if the person is receiving, or has received, protection under a program conducted under the auspices of the Australian Federal Police, or the police force of a State or Territory, for the protection of:*
- (a) *witnesses; or*
 - (b) *people who, because of their relationship to, or association with, a witness need, or may need, such protection; or*
 - (c) *any other people who, for any other reason, need or may need, such protection.*
- (3) *In this section, law means law of the Commonwealth or of a State or Territory.*

Decision

In relation to your request for documents:

- *confirming the underlying funds were controlled by Jack Flader and or GCSL.*
- *to support the investments were not made into Flader controlled funds*
- *documentation indicating the movement of funds invested in the ARP Growth Fund from 2006 to 2007*

Pursuant to section 25 of the FOI Act, I neither confirm nor deny whether the documents requested by you exist. In the event that any such documents do exist, they would be exempt by virtue of:

- (i) Section 33 of the FOI Act, in particular section 33(a)(iii), as release of such a document would or could reasonable 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 the foreign government and agencies, which would or could reasonably be expected to casue damage to the international relations of the Commonwelath. 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;

- (ii) Section 33 of the FOI Act, in particular section 33(b), as the disclosure of the document under the Act would divulge information or a matter communicated in confidence by or on behalf of an authority of a foreign government to an authority of the Commonwealth;

And/or

- (iii) Section 37 of the FOI Act, in particular section 37(1), 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.

Section 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 section 37(1). Further, subsection 25(2) of the FOI Act enables an agency to give a notice neither confirming or denying the existence in its possession of a requested document, of a kind mentioned in section 25(1).

Section 33(a)(iii) of the FOI Act exempts documents from release under the FOI Act if disclosure of the documents would, or could reasonably be expected to cause damage to the international relations of the Commonwealth.

"Damage" for the purpose of this exemption is not confined to loss or damage in monetary terms. The relevant damage may comprehend intangible damage to Australia's reputation. Such damage may include inhibiting future negotiations or flow of confidential information between ASIC and a foreign government or agency.

The phrase "international relations" has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations to protect the flow of confidential information between them.

In respect of your request for documents:

- *showing what funds are referred to by ASIC that were invested into the ARP Growth Fund.*

have already been provided in the decision of 15 December 2014 in respect of your FOI request No 298 (a copy of this decision is enclosed for your information).

Please note that I do not intend to include the documents that have already been provided to you under the earlier FOI requests.

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



ASIC

Australian Securities & Investments Commission

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Our Ref: ENF2014/24463
Your Ref: FOI 297, 298, 306

15 December 2014

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

email: johnnt@learth.net

Dear Mr Matters,

Freedom of Information Request

I refer to your requests under the *Freedom of Information Act 1982* (FOI Act) numbered 297 and 298, both dated 19 November 2014, and 306 dated 6 December 2014. As these requests relate to the same subject matter, they will be processed as one request.

You have requested the following:

297

Please provide documents held by ASIC of what is understood about the transfer of several million dollars out of the Astarra Strategic Fund and moved to cover commitments of the ARP Growth Fund. Please provide documents held by ASIC that examined whether the responsible manager breached their duty and or responsibilities by moving these assets without informing anybody.

298

Regarding the ANZ bank statements that confirm direct transfers from Astarra Strategic fund bank accounts to the ARP Growth Fund bank account.* VOFF seek documentation of whether ASIC examined this issue of assets between ASF to ARP Growth prior August 2011 before Shawn Richard appeared for trial, or if this is new information.

Please provide document of ASIC's decision to look into this matter of the secret movement of assets, or that it has already dealt with it. Please provide document that covers legal aspects of this secret movement of assets.

306

Please provide documents of any other similar large amounts of money moved from Astarra Strategic to the ARP Growth as illustrated in this particular transfer mentioned in the Illawarra Mercury. Please provide the document that informed Justice Palmer about transactions of money from Astarra Strategic fund to the ARP Growth fund.

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

I have identified documents which come within the scope of your requests. These documents are listed in the schedule to this document.

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.*

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 on the attached Schedule. The document at item 32 has been modified to delete particulars of individuals, in accordance with s22 of the FOI Act.

Documents exempt under s25(1)

Pursuant to section 25 of the FOI Act, I neither confirm nor deny whether any other documents requested by you exist. 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) 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).

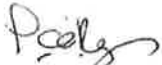
Review Rights

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 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

No	Description of document	Date	No of pages	Decision on access	Relevant section
1.	Supplemental DPA S01542536	22 May 2008	4	release	
2.	Instruction S02089057	23 May 2008	9	release	
3.	Document number: S02014354 ANZ statement	29/6/07	1	Release	
4.	ANZ statement	27/7/07	1	Release	
5.	ANZ statement	31/7/07	1	Release	
6.	ANZ statement	31/8/07	1	Release	
7.	ANZ statement	12/9/07	1	Release	
8.	ANZ statement	28/9/07	1	Release	
9.	ANZ statement	31/10/07	1	Release	
10.	ANZ statement	30/11/07	1	Release	
11.	ANZ statement	31/12/07	1	Release	
12.	ANZ statement	31/1/08	1	Release	
13.	ANZ statement	29/2/08	1	Release	
14.	ANZ statement	31/3/08	1	Release	
15.	ANZ statement	30/4/08	1	Release	
16.	ANZ statement	30/5/08	1	Release	
17.	ANZ statement	30/6/08	1	Release	
18.	ANZ statement	31/7/08	1	Release	
19.	ANZ statement	29/8/08	1	Release	
20.	ANZ statement	30/9/08	1	Release	
21.	ANZ statement	31/10/08	1	Release	
22.	ANZ statement	28/11/08	1	Release	
23.	ANZ statement	31/12/08	1	Release	
24.	ANZ statement	30/1/09	1	Release	
25.	ANZ statement	27/2/09	1	Release	
26.	ANZ statement	18/3/09	1	Release	
27.	Supplemental DPA SO1772332	17 June 2008	4	Release	
28.	Instruction SO2089060	18 June 2008	7	release	
29.	Supplemental DPA SO1772333	17 June 2008	5	release	
30.	Instruction SO20890659	18 June 2008	7	release	
31.	Emails S Richard to Trio re purchase of Exploration B units SO2097196		11	Partial Release	
32.	Supplemental DPA SO2118141	30 June 2009		release	

33.	Statement of Shawn Richard	3 Dec 2010		Already provided	
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