



ASIC

Australian Securities & Investments Commission

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Our Reference: ENF2-13/10718

Your Reference: No 35a

5 July 2013



Dear 

**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 5 June 2013 in which you sought access to:

Findings of Mr Unicomb's investigation

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. Please note that I have redacted a number of these documents for relevance.

Please note that the Statement of Facts used in the criminal proceedings against Shawn Richard, and the Enforceable Undertakings entered into between the Australian Securities and Investments Commission with Shawn Richard and Timothy Frazer are publicly available document and therefore not subject to the FOI Act.

Relevant Legislation

Section 37(1) and (2) of the FOI Act 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.*
- (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.*

Subsection 42(1) of the FOI Act provides:

A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

Section 47C(1) of the FOI Act provides:

A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

(a) *an agency; or*

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 documents 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:

Section 37(1)(a)

- ASIC still has an ongoing investigation into suspected misconduct arising from the collapse of Trio Capital Ltd (in liqu);
- Disclosure would, or could reasonably be expected prejudice the conduct of that investigation.

Section 42

- The document is subject to legal professional privilege;
- The document contains legal advice or was prepared for the purposes of obtaining that legal advice.

Section 47C(1)(a)

- Disclosure could reasonably be expected to impede deliberations by ASIC and its staff;
- Deliberations are in respect of the conduct of an ongoing investigation, where a robust discussion about the evidence collected, the options available, the investigative steps and proposals for resolution is required;
- These robust deliberations contribute to the efficient and effective resolution of what are often complex and resource intensive investigations.

Public Interest

Section 47C is a conditional exemption, meaning that I am to give a person access to the document unless access to the document on balance would be contrary to the public interest.

While I am aware of the public interest surrounding the investigation in Trio Capital Ltd (in liq), given the circumstances and the nature of the documents 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.

Section 22

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.

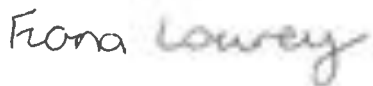
Review Rights

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



Fiona Lourey

Senior Lawyer

(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 folios	Decision on access	Relevant section
1.	Draft Media Release	No date	1	Release	
2.	ASIC internal email attaching draft Enforceable Undertaking and Memo	03/12/2010	5	Release redacted	
3.	Draft Enforceable Undertaking	Undated	3	Release	
4.	ASIC internal memo to Tony D'Aloisio	01/12/2010	1	Exempt	37(1) 42 47C(1)
5.	ASIC internal email attaching paper for consideration by Commission	18/02/2010	2	Release redacted	
6.	Commission Paper	18/02/2010	1	Release	
7.	ASIC internal email attaching Commission Paper	16/02/2010	2	Release	
8.	Commission Paper	16/02/2010		Exempt	37(1) 47C(1)
9.	ASIC internal email – Frazer Enforceable Undertaking	12/09/2011	1	Release redacted	
10.	ASIC internal email – Richard Sentencing	15/05/2011	1	Release redacted	
11.	ASIC internal email - Frazer Enforceable Undertaking	18/03/2010	1	Release redacted	
12.	ASIC internal email – Richard Enforceable Undertaking	16/11/2010	1	Release redacted	
13.	ASIC internal email - Astarra	01/10/2009	1	Release redacted	