

(5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Section 11B of the FOI Act states:

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).*
- (2) This section does not limit subsection 11A(5).*

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:

 - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
 - (b) inform debate on a matter of public importance;*
 - (c) promote effective oversight of public expenditure;*
 - (d) allow a person to access his or her own personal information.**

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:

 - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;*
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;*
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;*
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;*
 - (d) access to the document could result in confusion or unnecessary debate.**

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.*

Section 24A(1) of the FOI Act states:

Document lost or non-existent

- (1) *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 47F(1) of the FOI Act provides:

General rule

- (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).*
- (2) *In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
 - (a) *the extent to which the information is well known;*
 - (b) *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;*
 - (c) *the availability of the information from publicly accessible sources;*
 - (d) *any other matters that the agency or Minister considers relevant.*
- (3) *Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.*

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

Documents that provide an account of the benefits Shawn Richard provided to the authorities, not the original sealed document filed with the Supreme Court:

I have caused searches of ASIC to be made. These searches have revealed no documents within the scope of this part of your request.

I am satisfied that all reasonable steps have been taken to locate the documents relevant to your **request** and I am satisfied that the documents do not exist. I have therefore decided to refuse your request pursuant to s 24A(b)(ii) of the FOI Act.

Documents concerning the settlement accepted between Insolvency Firm Jirsch Sutherland and Shawn Richard's parents over the return/ repayment of \$160,000 sent by Shawn:

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

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:

- that there disclosure would involve the unreasonable disclosure of personal information of Mr Conrad and Mrs Helene Richard;
- The personal information is details of their private financial affairs and details for their relationship with their son;
- Mr and Mrs Richard are elderly and infirm and the disclosure of their personal information is likely to cause them considerable distress.

In reaching this decision I am satisfied that at this particular time that on balance the disclosure of this personal information would be contrary to the public interest.

I note that the release of the information would prejudice the personal privacy of Mr and Mrs Richard in circumstances where it is on the public record that Richard's trustee in bankruptcy made a commercial settled his claim against Mr & Mrs Richard in respect of a voidable payment that Richard made to them, the terms of which the trustee chose not to disclose. There trustee claim was on the basis that the transaction is a voidable transaction under the relevant bankruptcy legislation there was no suggestion by the trustee of Mr or Mrs Richard being involved in or having any knowledge of their son's misconduct when they received the payments.

The disclosure of this information would not assist in promoting the effective oversight of public expenditure or provide any insight into the operation of the Government or Commonwealth agencies.

These documents concern the administration of Richard's bankrupt estate in circumstances where Richard's bankruptcy ceased on 20 January 2014. It was open to the creditors at the time (on or around May 2011) to object to the proposed settlement. 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

Documents of the alleged \$6.7 million that was directed to Shawn Richard and Astarra Asset Management Pty Ltd:

I have identified one documents which come within the terms of your request. I have decided to release this document entitled:

"Record of deposits to AAM from GCSL and Shawn Richard During the period 1 July 2008 to 30 June 2009"

to you under the terms of the FOI Act.

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	No of folios	Decision on access	Relevant section
1	Letter Re: Bankrupt estate of Shawn Richard No. NSW 308 of 2011/5	4 May 2011	1	Exempt	s47F
2	Trustee's Report Bankrupt estate of Shawn Darrell Richard No: NSW 308 of 2011/5	5 May 2011	4	Exempt	s47F
3	Email	17 May 2011	1	Exempt	s47F
4	Letter Re: Bankrupt estate of Shawn Darrell Richard No: NSW 308 of 2011/5	17 May 2011	1	Exempt	s47F
5	Email	24 May 2011	3	Exempt	s47F
6	Letter Re: Bankrupt estate of Shawn Darrell Richard No: NSW 308 of 2011/5	20 June 2011	2	Exempt	s47F
7	Article " <i>Bankruptcy trustee hunts Richard's money</i> "	undated	1	Release	
8	Trustee Report Bankrupt estate of Shawn Darrell Richard No: NSW 308 of 2011/5	24 March 2015	4	Exempt	s47F

Bankruptcy trustee hunts Richard's money

Written by: Vishal Teekchandani

Insolvency firm Jirsch Sutherland has begun clawing back money former Astarra Asset Management (AAM) director Shawn Richard paid out of his overseas bank account before becoming bankrupt.

Richard made numerous transactions from his Liechtenstein-based LGT Bank account prior to declaring bankruptcy, including a US\$160,000 (\$146,000) transfer to his parents in Canada, a representative of Jirsch Sutherland, Richard's bankruptcy trustee, said.

"The trustee demanded repayment of the US\$160,000 from his parents," Jirsch Sutherland senior manager Michael Chan told IFA.

"Negotiations were conducted after and a settlement has been agreed on between the parties for a lesser amount."

Richard voluntarily entered bankruptcy in late January over the

Trio Capital/AAM fraud and owed unsecured creditors about \$3.22 million, a Jirsch Sutherland letter to the New South Wales Supreme Court said.

Most of the money is owed to National Australia Bank (NAB) and the debt was in relation to a "personal guarantee pertaining to loan accounts held by AAM" and Astarra Funds Management, it said.

Chan said NAB had made a formal claim of about \$3.2 million against Richard. NAB was unable to comment due to client confidentiality, a NAB spokesperson said.

The letter said that in terms of assets, Richard held nearly \$40,000 in his Westpac bank accounts and also an undisclosed amount in the LGT Bank account. The LGT account had nothing in it when Richard entered bankruptcy, Chan said.

"The funds in the LGT account were dispersed well before the bankruptcy occurred. It was dispersed over a period

of time before the bankruptcy," he said.

However, Richard had provided limited assistance to Jirsch Sutherland in obtaining the LGT Bank statements and providing details of transactions in the account, he said. "By him assisting us in getting the LGT Bank statements we are now able to determine where the money has been paid to as per the details on the bank statements from the LGT account," he said.

Jirsch Sutherland would look to claw back other transactions where possible, he said. "There is definitely a significant amount that needs further investigation. The crux of the investigation is the LGT account," he said.

Richard was jailed on 22 July after a NSW Supreme Court judge convicted him of dishonest conduct while running a financial services business. Last year, he pleaded guilty to two charges of dishonest conduct while running AAM and admitted to a third

charge of making false statements in relation to financial products following an ASIC investigation.

The charges each carry a maximum penalty of five years' imprisonment or a \$220,000 fine, or both. Richard's sentencing is scheduled for 12 August.

"Mr Richard, in respect of the two counts of the indictment to which you pleaded guilty, I convict you on both," Justice Peter Garling said during the hearing.

"However, it is proper that I indicate to you that I will be imposing a sentencing of imprisonment.

"I wish, however, to proceed carefully given the evidence that is presented before me and the submissions on behalf of the Crown and on your behalf."

It is alleged Richard dishonestly received undisclosed payments in his role as investment manager of the Astarra Strategic Fund and Astarra Superannuation Plan. «



**Record of deposits to AAM from GCSL and Shawn Richard
During the period 1 July 2008 to 30 June 2009**

Payer	Date Received	Source Document	Amount (AU\$)	Total (AU\$)
GLOBAL CONSULTANTS AND SERVICES LTD	20/10/2008	S01750534	164,363.93	
	13/11/2008	S01750535	224,376.21	
	28/11/2008	S01750535	37,572.73	
	1/12/2008	S01750536	337,407.30	
	23/12/2008	S01750536	734,290.28	
	12/01/2009	S01750537	385,525.09	
	4/02/2009	S01750538	54,951.55	
	6/02/2009	S01750538	324,508.24	
	10/03/2009	S01750539	77,040.56	
	11/03/2009	S01750539	726,849.02	
	2/04/2009	S01750540	526,967.69	
	29/04/2009	S01750540	461,522.77	
	26/05/2009	S01750541	430,748.19	
	10/06/2009	S01750542	264,375.81	4,750,499.37
SHAWN RICHARD	30/07/2008	S01750531	103,980.00	
	20/08/2008	S01750532	79,980.00	
	3/09/2008	S01750533	49,980.00	
	10/09/2008	S01750533	100,279.12	
	17/10/2008	S01750534	143,353.89	
	6/11/2008	S01750535	66,432.79	
	12/12/2008	S01750536	62,036.34	606,042.14
TOTAL			5,356,541.51	5,356,541.51

