



ASIC

Australian Securities & Investments Commission

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Our Ref: ENF2103/16123
Your Ref: 137

22 August 2013

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 on 17 June 2013 in which you sought access to:

The charts and documents shown to Shawn Darrell Richard during the Section 19 investigation, on 8th Oct 2009, 12th May 2010, 1st June 2010 and on any other date that the Section 19 investigation was held.

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

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 as follows:

- (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 marked **Release** on the attached Schedule.

I have decided not to release the documents marked **Exempt** in the attached schedule pursuant to s37(1) of the FOI Act, on the grounds that the documents are exempt because their disclosure would or could reasonably be expected to prejudice the conduct of an ongoing investigation. I have considered whether, pursuant to s22 of the FOI Act, access should be granted to part of the exempt documents. I find that the documents are exempt documents under the FOI Act. I further find that it would not be possible to make edited copies of these exempt documents with deletions so that the documents would not be exempt documents.

Where a document is listed in the schedule as being **Partially exempt**, I have determined that it is possible to make an edited copy of the document with deletions so that the documents would not be exempt documents.

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).

I note that some documents shown to Mr Richard during the section 19 examinations are publicly available and the FOI Act does not apply to these 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



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	ASIC internal document	22/09/2009		Exempt	37(1)
2	ASIC internal document	24/09/2009		Exempt	37(1)
3	Email chain	29/09/2009		Exempt	37(1)
4	Email chain	30/09/2009		Exempt	37(1)
5	Document entitled <i>Astarra Asset Management profile 1 August 2009</i>	01/08/2009		Release	
6	Email chain	30/09/2009		Exempt	37(1)
7	ASIC internal document	29/09/2009		Exempt	37(1)
8	ASIC internal document	30/09/2009		Exempt	37(1)
9	Email chain	30/09/2009		Exempt	37(1)
10	Email chain	30/09/2009		Exempt	37(1)
11	ASIC internal document	30/09/2009		Exempt	37(1)
12	Document entitled <i>Astara Strategic Fund: Monthly Return Report July 2009</i>			Release	
13	Media release <i>Astarra reaches its first billion dollar milestone</i>	Undated		Release	
14	Bank records	11/11/05		Exempt	37(1)
15	ASIC internal document	undated		Exempt	37(1)
16	Email chain	27/02/2008		Exempt	37(1)
17	Email chain	17/10/2008		Exempt	37(1)
18	Bank record	undated		Exempt	37(1)
19	ASIC internal document	undated		Exempt	37(1)
20	Corporate record	Undated		Exempt	37(1)
21	Bank record	undated		Exempt	37(1)
22	Bank record	undated		Exempt	37(1)
23	ASIC internal document	undated		Exempt	37(1)
24	Correspondence	23/06/2009		Exempt	37(1)
25	Fundraising document	01/12/2004		Exempt	37(1)
26	Correspondence	31/10/2009		Exempt	37(1)
27	Offer by Atlantis Capital Markets Cayman LDC	30/11/2005		Release	
28	Offer by Atlantis Capital Markets Cayman LDC	Dec 2005		Release	
29	Email chain	03/05/2007		Exempt	37(1)
30	Email chain	17/07/2006		Exempt	37(1)
31	Email chain	09/10/2006		Exempt	37(1)
32	Email chain	27/11/2006		Exempt	37(1)
33	Email chain	11/05/2007		Exempt	37(1)
34	Email chain	30/08/2007		Exempt	37(1)
35	Email chain	12/09/2007		Exempt	37(1)
36	Email chain	02/11/2007		Exempt	37(1)
37	Email chain	20/11/2007		Exempt	37(1)
38	Email chain	13/12/2007		Exempt	37(1)
39	Email chain	14/12/2007		Exempt	37(1)

40	Email chain	17/12/2007		Exempt	37(1)
41	Fax	17/12/2007		Exempt	37(1)
42	Email	13/11/2008		Exempt	37(1)
43	Email chain	01/10/2009		Exempt	37(1)
44	Email chain	01/10/2009		Exempt	37(1)
45	Letters (30)	Various		Exempt	37(1)
46	Email chain	23/10/2009		Exempt	37(1)
47	Letter	30/09/2008		Exempt	37(1)
48	Transaction document	12/12/2007		Exempt	37(1)
49	Summary document	Undated		Exempt	37(1)
50	Letter	04/11/2008		Exempt	37(1)
51	Email	26/03/2006		Exempt	37(1)
52	Astarra Capital Ltd: meeting minutes	27/09/2006		Release	
53	Email	20/01/2010		Exempt	37(1)
54	Astarra Capital Ltd: draft meeting minutes	25/10/2006		Release	
55	Email	28/11/2006		Exempt	37(1)
56	Astarra Capital Ltd: meeting minutes	15/11/2006		Release	
57	Astarra Capital Ltd: meeting minutes	22/11/2006		Release	
58	Corporate records	26/06/2007		Exempt	37(1)
59	Astarra Capital Ltd: meeting minutes	27/06/2007		Release	
60	Astarra Capital Ltd: meeting minutes	21/11/2007		Partially exempt	37(1)
61	Handwritten notes: Astarra investment Committee minutes	21/11/2007		Partially exempt	37(1)
62	Email chain	26/05/2008		Exempt	37(1)
63	Astarra Capital Ltd: meeting minutes	30/07/2008		Release	
64	Email	01/08/2008		Exempt	37(1)
65	Astarra Capital Ltd: minutes of investment committee meeting	16/04/2009		Release	
66	Astarra Capital Ltd: meeting minutes	17/06/2009		Partially exempt	37(1)
67	Handwritten notes: Astarra minutes of investment committee	17/06/2009		Release	
68	Astarra Capital Ltd Board Minutes	24/06/2009		Release	
69	Fax	31/08/2009		Exempt	37(1)
70	Summary	Undated		Exempt	37(1)
71	Summary unit prices for Astarra funds	Undated		Release	
72	Email	07/12/2007		Exempt	37(1)
73	letter	12/12/2007		Exempt	37(1)
74	letter	23/06/2008		Exempt	37(1)
75	Email	28/08/2008		Exempt	37(1)
76	Transaction document	29/08/2008		Exempt	37(1)
77	Transaction document	09/10/2008		Exempt	37(1)
78	Email	03/11/2008		Exempt	37(1)
79	Transaction document	03/11/2008		Exempt	37(1)
80	Email	28/08/2008		Exempt	37(1)
81	Transaction document	03/11/2008		Exempt	37(1)

82	Transaction document	05/01/2009		Exempt	37(1)
83	Email	03/02/2009		Exempt	37(1)
84	Email	02/03/2009		Exempt	37(1)
85	Email	03/11/2008		Exempt	37(1)
86	Email	29/01/2009		Exempt	37(1)
87	Email	02/02/2009		Exempt	37(1)
88	Letter	11/02/2010		Exempt	37(1)
89	Email	11/02/2010		Exempt	37(1)
90	calculations	31/05/2009		Exempt	37(1)
91	Summary	Undated		Exempt	37(1)
92	Bank record	30/02/2009		Exempt	37(1)
93	Bank record	30/06/2006		Exempt	37(1)
94	Bank record	18/06/2009		Exempt	37(1)
95	Email	02/03/2009		Exempt	37(1)
96	Email	03/03/2009		Exempt	37(1)
99	Astarra Capital Ltd: meeting minutes	13/12/2006		Release	