

Australian Transaction Reports  
and Analysis Centre

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Australian Government

AUSTRAC

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Barton ACT 2600 Australia  
[www.austrac.gov.au](http://www.austrac.gov.au)

Our ref: 13/899

12 July 2013



Dear [REDACTED]

**Freedom of Information Request Decision – Paul Raymond Matters**

I refer to your Freedom of Information Request (FOI request) under the *Freedom of Information Act 1982* (FOI Act) which the Australian Transaction Reports and Analysis Centre (AUSTRAC) received on 29 May 2013 and the email of 31 May 2013 confirming the scope of the request. On behalf of Victims of Financial Fraud Inc., you sought access to:

*'reports for the Trio Capital fund regarding international funds transfers'.*

A search of the databases administered by AUSTRAC was conducted using the following search parameters:

Name	Trio Capital Trio Capital Fund Trio Capital Ltd Astarra Capital Ltd
Address	Level 1 540 Swift Street ALBURY NSW 2640
Australian Business Number	33001277256

The searches for the requested documents revealed 9 (nine) documents that fall within the scope of the request. This finding was confirmed by AUSTRAC's Monitoring and Analysis Unit.

I have examined the documents and decided to:

- release 6 (six) documents in full under the FOI Act;
- exempt in part 1 (one) document under section 47F of the FOI Act; and
- exempt in part 2 (two) documents under 47G of the FOI Act.

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Please find enclosed a copy of the schedule and the documents released and exempted in accordance with the FOI Act.

Section 26 of the FOI Act requires AUSTRAC to provide a statement of reasons in support of a decision. My reason for the decision is set out in the statement of reasons below.

If you are dissatisfied with the decision, the FOI Act provides the following avenues of review:

## **1. Internal Review**

Section 54 of the FOI Act gives you the right to apply for an internal review of the decision refusing to grant access to documents in accordance with his request. An application for a review of the decision must be made in writing within 30 days of receipt of this letter. No particular form is required; however, it would assist the Decision Maker if the application grounds on which it is considered that the decision should be reviewed were set out.

Applications for review of the decision should be addressed to:

Freedom of Information Officer  
AUSTRAC  
C/-Attorney General's Department  
3-5 National Circuit  
BARTON ACT 2600.

It is not necessary but preferred to seek internal review with AUSTRAC before seeking review of the decision by the Australian Information Commissioner.

## **2. Australian Information Commissioner**

Under section 54L of the FOI Act an application for review may be made to the Australian Information Commissioner (Commissioner). The Commissioner has the power to review FOI decisions made by AUSTRAC and may affirm, vary or set aside the decision and make a new decision. Applications for review to the Commissioner must be made within 60 days of being notified of the outcome of the internal review. Where an application is made directly from the original decision, the application must be made within 60 days of being notified of the original decision.

An appeal to the Commissioner may also be made if you have not been informed of the outcome of the internal review within 30 days of the application being received by AUSTRAC.

## **3. Administrative Appeals Tribunal**

An application may be made to the Administrative Appeals Tribunal (AAT), which has broad powers and may overturn a decision where appropriate. A review by the AAT is possible after the Commissioner has made a decision. The AAT may also review a decision by the Commissioner not to undertake a review. An application must be submitted to the AAT within 60 days of being notified of the review by the Commissioner. An appeal to the AAT may also be made if you have not been informed of the outcome of the internal review within 30 days of the date of his/her application. A fee of \$816.00 may be payable to make application to the AAT. The Administrative Appeals Tribunal can be contacted on 1300 366 700.

## **4. Complaints**

The Commissioner also has the power to investigate complaints relating to the handling of FOI requests. Section 70 of the FOI Act allows a complaint to be made to the Commissioner about an action taken by AUSTRAC in the performance of functions or exercise of its powers under the FOI Act. A complaint must be made in writing and must identify AUSTRAC as the agency that made the decision. There is no particular form required to make a request to the Commissioner, however, a request should set out the

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grounds on which it is considered the action taken in relation to the FOI request should be investigated. The Office of the Commissioner can be contacted on 1300 363 992.

Online : <http://www.oaic.gov.au/freedom-of-information/making-a-complaint>  
Email : [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
Post : GPO Box 2999, Canberra ACT 2601  
In person: Level 3, 175 Pitt Street, Sydney NSW 2000.

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <http://www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>.

While the Commonwealth Ombudsman retains power to investigate complaints about FOI matters (section 89F of the FOI Act) these complaint investigation powers run concurrently to those of the Commissioner. In order to avoid duplication of resources, the Commonwealth Ombudsman will decline to investigate matters that can be investigated by the Commissioner and the Commonwealth Ombudsman will transfer any complaints they receive to the Commissioner under section 6C of the Ombudsman Act 1976.

While complaints should be made to the Commissioner in the first instance, the Commonwealth Ombudsman also has the power to investigate action taken by AUSTRAC in relation to your application. The Ombudsman can be contacted on 1300 362 072.

If you have any questions or require further information, please contact the writer on +61 (2) 61202631 on or via email – [INFO\\_ACCESS@austrac.gov.au](mailto:INFO_ACCESS@austrac.gov.au).

Yours sincerely,



Sakimi Samuels  
Authorised Decision Maker  
AUSTRAC



## **Statement of Reasons for the decision – Paul Raymond Matters**

I, Sakimi Samuels, am an officer authorised under subsection 23(1) of the FOI Act to make a decision in relation to your request.

The following is my decision and the reasons for that decision.

### **Decision**

I have examined the 9 (nine) documents and decided to:

- release 6 (six) documents in full under the FOI Act;
- exempt in part 1 (one) document under section 47F of the FOI Act; and
- exempt in part 2 (two) documents under 47G of the FOI Act.

### **Reason for releasing 6 (six) documents in full under the FOI Act**

Astarra Capital Ltd, the former name for Trio Capital Ltd did not object to the release to you of its business information. Also, the third party beneficiaries in the documents released to you in full were consulted but they did not make submissions and the mails sent to the third parties were not returned to sender.

### **Reason for exempting in part 1 (one) document under section 47F of the FOI Act**

The factors taken into consideration under section 47F of the FOI Act included the following:

- The definition of personal information under subsection 4(1) of the FOI Act;
- The nature of the information e.g. whether the disclosure would cause no serious consequences;
- The object of the FOI Act, which encourages a right of access to documents held by government agencies, subject to certain exemptions; and
- The extent to which the information is already a matter of public knowledge and/or well known.

The factors against the release of documents under section 47F of the FOI Act included the following:

- Release of the information that relates to a third party would be considered to be known to or to have been associated with the matter;
- The disclosure of information that relates to a third party whose identity is apparent, or can reasonably be ascertained from this information would be considered as unreasonable disclosure; and
- The information is not a matter of public knowledge nor would disclosure be in the public interest, as it relates to personal information pertaining to third parties.

Taking into consideration:

- (i) that the third party was not able to make submissions under section 27A of the FOI Act because the consultation letter was returned to sender; and
- (ii) the factors for and against disclosure of the relevant information under subsections 11B(3) and 11B(4) of the FOI Act.

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I have decided to exempt in part the document under section 47F of the FOI Act on the basis that the considerations against disclosure outweighs those in favour of disclosure given that disclosure of the third party's information would result in the unreasonable disclosure of personal information of the third party.

## **Reason for exempting in part 2 (two) documents under section 47G of the FOI Act**

The factors taken into consideration under section 47G included the following:

- The nature of the information e.g. whether the disclosure would cause no serious consequences;
- The object of the FOI Act, which encourages a right of access to documents held by government agencies, subject to certain exemptions; and
- The extent to which the information is already a matter of public knowledge and/or well known.

The factors against the release of documents under section 47G included the following:

- Release of the information that relates to a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs would be considered to be known to or to have been associated with the matter;
- The disclosure of information that relates to a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs whose identity is apparent, or can reasonably be ascertained from this information would be considered as unreasonable disclosure;
- The information is not a matter of public knowledge nor would disclosure be in the public interest, as it relates to business information pertaining to third parties.

Taking into consideration:

- (i) that the third party was not consulted to make submissions under section 27A of the FOI Act because there was no address on the documents to send the letter; and
- (ii) the factors for and against disclosure of the relevant information under subsections 11B(3) and 11B(4) of the FOI Act.

I have decided to exempt in part the documents under section 47G of the FOI Act on the basis that the considerations against disclosure outweighs those in favour of disclosure given that disclosure of the third party's information would result in the unreasonable disclosure of personal information of the third party.

## **Public interest considerations**

I have considered the public interest factors for the documents where I have exempted the information in part under section 47F and 47G of the FOI Act in my decision. Hence, my findings are as follows:

### ***11A Access to documents on request***

#### ***Scope***

- (1) *This section applies if:*
  - (a) *a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:*
    - (i) *a document of the agency; or*
    - (ii) *an official document of the Minister; and*



- (b) *any charge that, under the regulations, is required to be paid before access is given has been paid.*

- (2) *This section applies subject to this Act.*

*Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:*

- (a) *section 12 (documents otherwise available);*
- (b) *section 13 (documents in national institutions);*
- (c) *section 15A (personnel records);*
- (d) *section 22 (access to edited copies with exempt or irrelevant matter deleted).*

*Mandatory access—general rule*

- (3) *The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.*

*Exemptions and conditional exemptions*

- (4) *The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.*

*Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).*

- (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.*

*Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.*

*Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).*

*Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.*

- (6) *Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:*

- (a) *a conditionally exempt document; and*
- (b) *an exempt document:*
  - (i) *under Division 2 of Part IV (exemptions); or*
  - (ii) *within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).*

Subsection 11A(5) requires AUSTRAC to give a person access to an identified document if it is conditionally exempt, unless, access to the document at that time would be on balance, be contrary to the public interest.

I considered section 11B in order to determine if access to an identified document, which is exempt in part under section 47F and 47G is contrary to the public interest.

**11B Public interest exemptions—factors**

*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.*

After considering all relevant public interest factors to not release these documents in full, I have decided that granting full access to the identified documents would be contrary to the public interest. The third party beneficiaries listed in these documents were not able to make submissions during the third party consultation under section 27A of the FOI Act because one of the third parties did not have an address on the document for correspondence and the other third party's consultation letter was returned to the sender. Hence it is not in the public interest to release the third parties personal information to the applicant under this request.

**EVIDENCE/MATERIAL ON WHICH MY FINDINGS WERE BASED**

In reaching my decision, I relied on the following documentary evidence:

- *Freedom of Information Act 1982*;
- application details received by AUSTRAC from you 29 May 2013;
- the email you sent to AUSTRAC on 31 May 2013;
- third party consultation letters;
- one letter from the third party consultation returned to sender; and
- searches conducted by AUSTRAC.



## Relevant sections of the Freedom of Information Act 1982

### 47F Public interest conditional exemptions—personal privacy

#### *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.*

#### *Access given to qualified person instead*

- (4) *Subsection (5) applies if:*
  - (a) *a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or wellbeing.*
- (5) *The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:*
  - (a) *carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first mentioned qualified person; and*
  - (b) *is to be nominated by the applicant.*
- (6) *The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.*
- (7) *In this section:*

*qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well being, and, without limiting the generality of the foregoing, includes any of the following:*

- (a) a medical practitioner;*
- (b) a psychiatrist;*
- (c) a psychologist;*
- (d) a counsellor;*
- (e) a social worker.*

*Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).*

**47G Public interest conditional exemptions—business**

- (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; or*
  - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*
- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.*
- (3) Subsection (1) does not have effect in relation to a request by a person for access to a document:*
  - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or*
  - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or*
  - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.*
- (4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.*
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.*

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*Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).*