



ASIC

Australian Securities & Investments Commission

Level 24, 120 Collins Street
Melbourne VIC 3000
GPO Box 9827 Melbourne VIC 3001

Telephone: (03) 9280 3200
Facsimile: (03) 9280 3444
ASIC website: www.asic.gov.au

Our Reference: 24949/13
Your Reference: FOI No. 65

10 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 10 June 2013 in which you sought access to the following:

“Emails and mail from the community reporting the Trio Capital fraud (September 2009 to December 2011) either to ASIC MoneySmart Report a Scam or to ASIC itself before MoneySmart was up and running. VOFF do not want personal details.”

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

MoneySmart website

I am advised by the Managing Editor of MoneySmart that searches of the MoneySmart website were conducted and no documents were identified.

As MoneySmart commenced on 15 March 2011, the relevant time frame for emails and mail to ASIC from the community for your request is from 1 September 2009 to 15 March 2011.

Emails and mail from the community

I identified 43 documents as relevant to your request. For your information, the text of reports of misconduct received through the ASIC website as an ‘eComplaint,’ although not technically an email, have been included as relevant to your request.

10 July 2013

As discussed on 1 July 2013, some emails to ASIC included attachments. You confirmed that you were also seeking access to these attachments.

Decision

I have decided to release the material marked 'release' in the attached schedule. The released document is the content of a particular eComplaint.

I have decided to deny access to the material marked 'exempt' in the attached schedule.

It is acknowledged that you do not want personal details and are not seeking to identify persons who lodge reports of misconduct with ASIC. However, the disclosure of the information would adversely affect the operations of ASIC and is therefore exempt under paragraph 47E(d) of the FOI Act.

Paragraph 47E(d) - Public interest conditional exemptions- certain operations of agencies

Paragraph 47E(d) provides that a document is conditionally exempt if its disclosure under the FOI Act would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The disclosure of the emails and mail, even with the personal information removed, would also provide details of what happened to the reporter of misconduct and their financial loss. It is known that persons lodged reports of misconduct about Trio Capital. Although the general subject matter is known, I am satisfied that if the actual content of the reports of misconduct were to be released, that the community would be less likely to report misconduct to ASIC or be less forthcoming in the information which they are prepared to report to ASIC.

The disclosure of the emails and mails would have a substantial adverse effect on the proper and efficient conduct of the operations of ASIC. This is because ASIC relies heavily on information from the public to gather intelligence and assist in identifying systemic misconduct. If those information sources become restricted due to fear of disclosure, it will have a substantial and adverse affect on ASIC's operational ability to gather intelligence through reports of misconduct.

This exemption is subject to the public interest test.

Public interest

The FOI Act provides that access must be given to a conditionally exempt document unless in the circumstances access would on balance be contrary to the public interest. As required by section 11A of the FOI Act I have considered whether the release of conditionally exempt documents would, on balance, be contrary to the public interest. In particular, I have considered the following factors outlined in subsection 11B(3) as being factors favouring access to the document in the public interest:

10 July 2013

1. Access to the documents would promote the objects of the FOI Act (including all matters set out in sections 3 and 3A).

I have considered the matters outlined in sections 3 and 3A which state that the FOI Act promotes disclosure of documents held by the Government of the Commonwealth.

2. Access to the documents would inform debate on a matter of public importance.

It is acknowledged that this issue has involved public attention. However, I do not consider that the content of these particular documents would inform debate because the disclosure would give an incomplete view of the matter.

3. Access to the documents would promote effective oversight of public expenditure.

I do not find that disclosure of the documents would promote effective oversight of public expenditure.

4. Access to the documents would allow a person to access his or her personal information

The release of the documents would not allow you to access your own personal information.

I find that, on balance, disclosure of the conditionally exempt documents would be contrary to the public interest. The public benefit that lies in disclosure is outweighed by the adverse affects on ASIC's operational activities. Those adverse affects include prejudice to ASIC's ability to obtain similar information in the future.

I find, therefore, that these documents are exempt from release under paragraph 47E(d) of the FOI Act.

Section 22

Section 22 of the FOI Act provides that:

- where an agency decides not to grant access to a document on the ground that it is an exempt document; and
- it is possible for the agency to make a copy of the document with such deletions that the copy would not be an exempt document; and
- it is reasonably practicable for the agency, having regard to the nature and extent of the work involved in deciding on and making those deletions and resources available for that work, to make such a copy:

the agency shall, unless it is apparent from the request or as a result of consultation by the agency with the applicant that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.

10 July 2013

I have considered whether, under section 22 of the FOI Act, it is possible to release the exempt documents with deletions such that the documents would no longer be exempt. I have attempted to edit the documents and I am of the view that such deletions would be so extensive that the exempt documents would be misleading and unintelligible. I am therefore satisfied that it is not practical to edit the documents for part release.

Review Rights

I provide you with the following information as required by section 26 of the FOI Act.

If 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

Yours sincerely



Fiona Crowe
(Authorised Decision-maker under subsection 23(1) of the FOI Act)
For the Australian Securities and Investments Commission

10 July 2013

Schedule of Documents

No	Description of document	Date	No of pages	Decision on access	Relevant section
1	Email	7/12/2009	1	Exempt	47E(d)
2	eComplaint	1/12/2009	1	Exempt	47E(d)
3	Fax	3/12/2009	2	Exempt	47E(d)
4	eComplaint	2/1/2010	1	Exempt	47E(d)
5	Email and attachments (relates to eComplaint above)	9/1/2010	15	Exempt	47E(d)
6	Email	18/1/2012	2	Exempt	47E(d)
7	eComplaint	15/2/2010	2	Exempt	47E(d)
8	Email and attachments (relates to eComplaint at 7 above)	14/5/2010	15	Exempt	47E(d)
9	Email and attachments	3/3/2010	44	Exempt	47E(d)
10	Email	20/2/2010	1	Exempt	47E(d)
11	Letter and attachments	24/9/2010	3	Exempt	47E(d)
12	eComplaint	7/3/2010	1	Exempt	47E(d)
13	Email and attachments	26/3/2010	13	Exempt	47E(d)
14	Letter	16/3/2010	2	Exempt	47E(d)
15	eComplaint	19/3/2010	1	Exempt	47E(d)
16	Letter	22/3/2010	1	Exempt	47E(d)
17	eComplaint	31/3/2010	1	Exempt	47E(d)
18	Letter	31/3/2010	4	Exempt	47E(d)
19	eComplaint	30/4/2010	2	Exempt	47E(d)
20	Email and attachments (relates to eComplaint at 19 above)	26/5/2010	36	Exempt	47E(d)
21	Letter	1/5/2010	2	Exempt	47E(d)
22	Email	20/5/2010	1	Exempt	47E(d)
23	Fax	16/9/2010	3	Exempt	47E(d)
24	Email and mailed attachments	3/6/2010	7	Exempt	47E(d)
25	Letter and attachment	15/6/2010	2	Exempt	47E(d)
26	Email	21/6/2010	1	Exempt	47E(d)
27	eComplaint	27/6/2010	1	Exempt	47E(d)
28	Email and attachment (relates to eComplaint at 27 above)	28/6/2010	2	Exempt	47E(d)
29	eComplaint	29/6/2010	1	Release	
30	Email	12/7/2010	1	Exempt	47E(d)
31	eComplaint	12/7/2010		Exempt	47E(d)
32	Letter	7/7/2010	1	Exempt	47E(d)
33	eComplaint	2/9/2010	1	Exempt	47E(d)
34	Complaint form	6/9/2010	7	Exempt	47E(d)
35	Faxed complaint form	8/9/2010	9	Exempt	47E(d)
36	Letter	24/9/2010	3	Exempt	47E(d)
37	Letter	28/7/2010	1	Exempt	47E(d)
38	Email	13/10/2008	4	Exempt	47E(d)

10 July 2013

39	Email and attachment	20/10/2010	3	Exempt	47E(d)
40	eComplaint	14/12/2010	2	Exempt	47E(d)
41	Email	17/1/2011	1	Exempt	47E(d)
42	Email	31/1/2011	3	Exempt	47E(d)
43	Letter	21/2/2011	1	Exempt	47E(d)