

Victims of Financial Fraud (VOFF Inc)  
Mr J Telford  
Secretary  
March 5<sup>th</sup> 2018

OAIC reference: MR17/00340  
Our reference: VOFF FOI number 458

Dear Information Commissioner,

The Information Commissioner (IC) said in letter dated 1 March 2018, *"I am a delegate of the IC. I have decided to finalise this review under s 54W(a)(i) of the FOI Act."*

In same letter the IC also pointed out,

*"that based on our enquiries, the document was provided in confidence to ASIC by a foreign government agency, and would therefore be exempt under s 33(b). On this basis, I have decided that your IC review application is lacking in substance. Accordingly, I have decided not to continue to undertake the IC review. Your IC review application is now closed".*

The IC has relied on two separate reasons to close VOFF's concern.

- 1) It is a frivolous matter.
- 2) The document requested is exempt under s 33(b) of the FOI Act.

#### **Reason 1.**

Section 54W of the FOI Act, for the decision to review—discretion not to review, means the IC may decide not to undertake an IC review, or not to continue to undertake an IC review, if:

- (a) the IC is satisfied of any of the following:
- (i) the IC review application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith;

VOFF strongly disagree with any of the following terms in relation to our FOI submission:

- frivolous (not having any serious purpose or value);
- vexatious (causing or tending to cause annoyance, frustration, or worry);
- misconceived (fail to understand (something) correctly);
- lacking in substance (insubstantial); and
- not made in good faith (honestly and without a deliberate intention to defraud the other party).

VOFF are shocked and find it incomprehensible to see the IC refer to s 54W(a)(i) in regards to VOFF's endeavour to acquire important information under the Freedom of Information Act about Australia's largest superannuation fraud in history that directly affected VOFF members.

#### **Reason 2.**

Section 33 of the FOI Act deals with documents affecting national security, defence or international relations.

The FOI Act states,

*33 Documents affecting national security, defence or international relations  
(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.*

According to the *Office of the Australian Information Commissioner's (OAIC's) Exemptions* document, *'In claiming the exemption, decision makers must examine the content of each document that is relevant to a request and come to a conclusion about whether disclosure of that content would cause, or could reasonably be expected to cause, the harm which the provision seeks to prevent. The context of each document is also relevant because, while the information in the document may not itself cause*

*harm, in combination with other known information it may contribute to a complete picture which results in harm (the 'mosaic theory').*<sup>1</sup>

VOFF suggest that the mosaic theory does not apply to the email sent by Frank Richard Bell in January 2009. VOFF also expect that Mr Bell's email exists on Eugene Liu and Shawn Richard's computer hard drives in Australia. Meaning that there are local copies of the same email and therefore should not be held to the "communicated in confidence to the Australian Government or agency by another government or one of its authorities, or by an international organisation"<sup>2</sup>

Further on OAIC write,

**'Information communicated in confidence**

*The test is whether information is communicated in confidence between the communicator and the agency to which the communication is made – it is not a matter of determining whether the information is of itself confidential in nature. Ref.<sup>3</sup> Information is communicated in confidence by or on behalf of another government or authority, if it was communicated and received under an express or implied understanding that the communication would be kept confidential. Ref.<sup>4</sup> Whether the information is, in fact, confidential in character and whether it was communicated in circumstances importing an obligation of confidence are relevant considerations. They may assist the decision maker to determine whether, on the balance of probabilities, information was communicated in confidence.'*<sup>5</sup> Ref.<sup>6</sup>

The handing over of emails could be argued as not the same as information that is communicated by or on behalf of another government. It is the handing over of emails.

The email by Frank Richard Bell to Trio management in January 2009 about the \$60m missing from a Trio underlying fund is hardly information that affects national security.

Is it more likely that the email is kept secret because it shows ASIC's failings. Considering Frank Richard Bell was one of the principals that operated the Trio Capital Limited underlying funds and had his name and particulars on ASIC's company registration and licensing documents dating back to a period (2001) before the Trio fund was established (Nov 2003). For example,

WORLD FINANCIAL GROUP AUSTRALIA PTY LTD

ACN: 097 478 487

FORM 201

Lodgement date 12/07/2001

On this ASIC document his address is marked as Florida, USA.

WRIGHT GLOBAL INVESTMENTS PTY LIMITED

ACN: 097 478 487

Registration date: 12/07/2001

On this ASIC document Bell's address is marked as Sydney, Australia.

During the period Mr Bell was operating Trio he was already barred from operating in the United States. The Financial Industry Regulatory Authority (FINRA) BrokerCheck Report of Frank Richard Bell shows he has had disciplinary action by the FINRA and that he is not currently registered with any FINRA firm. But ASIC allowed him to handle Australian investors superannuation and direct investment savings. ASIC did not check his credentials. Australian citizens had their savings disappear through Trio's underlying funds and Frank Richard Bell was not questioned over his role in operating the Trio fund where money disappeared.

There are several examples in SEC and court documents from 1998 to 2007 that show Mr Bell's connection with schemes where monies disappeared.

- October 1998 to November 2001 Mr Bell was with Pacific Continental Securities Corporation (CRD# 2398). The British arm of PCS UK collapsed in June 2007 and the investor losses from dodgy

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<sup>1</sup> Part 5 — Exemptions (version 1.1)| Office of the Australian Information Commissioner - OAIC 21/08/2017 page 6/40

<sup>2</sup> OAIC Part 5 — Exemptions 2917 page 8 & 9/40

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<sup>3</sup> ref. Secretary, Department of the Prime Minister and Cabinet v Haneef (2010) 52 AAR 360.

<sup>4</sup> ref. Re Maher and Attorney-General's Department [1986] AATA 16.

<sup>5</sup> OAIC Part 5 — Exemptions 2917 page 8 & 9/40

<sup>6</sup> Re Environment Centre NT Inc and Department of the Environment, Sport and Territories [1994] AATA 301.

stocks exceeded £300 million. The Financial Services Authority found PCS had acted without integrity between 2005 and 2007. Pacific Continental's shares were owned by a Delaware company and controlled by Zetland Financial Group, registered in the British Virgin Islands. The ultimate owner was James Sutherland. Remember! ASIC went to the Zetland Office in Hong Kong in 2002 to collect 100,000 documents from James Sutherland and Jack Flader. Seemingly ASIC forgot because 7 years later Sutherland and Flader have their names on Trio and \$194.5m disappeared.

- Stipulated Award, NASD Dispute Resolution, Inc. Case Number: 99-03856. Hearing Site: New York, New York. Statement of Claim filed on or about: August 20, 1999.
- Award, NASD Dispute Resolution. Case Number: 01-05745. Hearing Site: San Francisco, California. Statement of Claim filed: October 26, 2001.
- Frank Richard Bell fined \$100,000 in 2003 with World Financial Capital Markets, Inc.
- 2004 Ruling, Bell, acting for WFCM and PCS ordered to pay \$US67,000.
- 2005 Regulatory action initiated by NASD against Pacific Continental Securities Corp. Alleged respondent failed to comply with an arbitration award or settlement agreement or fees or to satisfactorily respond to an NASD request to provide information concerning the status of compliance. Sanctions Ordered - Suspension.
- 2008 Regulatory action initiated by FINRA alleged Bell failed to comply with an arbitration award or settlement agreement or to satisfactorily respond to FINRA request to provide information concerning the status of compliance. Sanctions Ordered – Suspension. 2008 ruling, NWF and several staff, including Bell, were ordered to pay \$378,000 for breaches of fiduciary duties and securities laws.

Justice Palmer in the NSW Supreme Court pointed out that,

*“Mr Frank Richard Bell (Mr Bell) is a director of Exploration Fund Limited. Mr Bell has been the subject of disciplinary action by the United States Financial Industry Regulation Authority which resulted in a number of sanctions and adverse findings against him.”<sup>7</sup>*

There is no evidence to show that ASIC provided the Australian Federal Police with the important information in Mr Bell's email and alert them to potential inappropriate management of Australian superannuation money for one of the directors to raise concern that \$60m is missing. There is no evidence that ASIC informed the Australian Transaction Reports and Analysis Centre (AUSTRAC) of potential breach of Anti-Money Laundering and Counter-Terrorism Financing laws. There is no evidence that the Parliamentary Joint Committee Inquiry into the Trio fraud, the NSW Supreme Court or the assigned liquidator of Trio PPB Advisory were informed of the missing \$60m.

This issue is another example that illustrates ASIC's selectiveness in handling evidence of a crime. Had the Trio investigation into the crime be in the hands of the Australian Federal Police, withholding such an important piece of evidence from the police would itself be a crime.

VOFF will send this letter to the Banking Royal Commission, as it is important that the Commissioner sees ASIC's handling of the Trio matter and the Trio victim's attempts to get information is not “lacking in substance”. There is evidence that ASIC withheld important information and did not question the overseas Trio operators. There is evidence that ASIC has kept details of the crime covered up, ignored the crime and suggested the missing money is due to poor financial advice.

Thank you  
Mr J Telford  
Secretary VOFF Inc.

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<sup>7</sup> Trio Capital Limited (Admin App) v ACT Superannuation Management Pty Ltd & Ors [2010] NSWSC 286 (16 April 2010) before Palmer J