

**Australian Transaction Reports  
and Analysis Centre**

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**Australian Government**

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*Our ref: 16/17-014*

27 September 2016

Michael Johnstone

via email: [foi+request-2178-143054fe@righttoknow.org.au](mailto:foi+request-2178-143054fe@righttoknow.org.au)

Dear Mr Johnstone

**Freedom of Information Request Decision**

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to your Freedom of Information request (FOI request) received by the Australian Securities and Investments Commission (ASIC) on 29 August 2016 in which you sought access to documents under the provisions of the *Freedom of Information Act 1982* (FOI Act). The request was subsequently transferred in part to AUSTRAC as ASIC found two documents to be more closely connected with the functions of AUSTRAC.

The documents you requested are:

*'I would like to request a copy of any information that the department has from the 2015/16 tax year for:*

*The Lamattina Group – VIC B19705865  
Lamattina Superannuation Pty Ltd – ACN 159 928 177  
Angelo R Lamattina Pty Ltd – ACN 610 690 287  
Josephine T Lamattina Pty Ltd – ACN 610 689 846  
Robert A Lamattina Pty Ltd – ACN 610 690 063  
Russell R Lamattina Pty Ltd – ACN 610 690 036  
D Lamattina Investments Pty Ltd – ACN 602 723 704  
R & T Lamattina Pty Ltd – ACN 007 418 948  
A & G Lamattina & Sons Pty Ltd – ACN 005 830 357'*

On 12 September 2016, ASIC transferred two documents in full to AUSTRAC under section 16 of the FOI Act.

I confirm that the following named documents were transferred to AUSTRAC in full:

- One page email
- Ten page report

*NOTE: The Australian Securities and Investments Commission will make a decision in relation to all documents not transferred to AUSTRAC.*

I examined the abovementioned documents and have decided to exempt them in full under subsections 7(2), 37(2)(b), 47E(a), and 47E(d) and sections 47F and 47G of 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 this decision is set out in **Attachment A**.

The FOI Act provides a number of avenues for review if you are dissatisfied with any aspect of this decision. Your review rights are set out in **Attachment B**.

If you have any questions or require further information, please contact the decision maker on 02 6120 2631 or via email at [INFO\\_ACCESS@austrac.gov.au](mailto:INFO_ACCESS@austrac.gov.au).

Yours sincerely

Authorised Decision Maker  
AUSTRAC

## ATTACHMENT A

### Statement of Reasons

I, Suzie Sazdanovic, am an officer authorised under subsection 23(1) of the *Freedom of Information Act 1982* (FOI Act) to make a decision in relation to your request.

The following is my decision and the reasons for that decision in relation to the two documents ASIC transferred to AUSTRAC in full under section 16 of the FOI Act.

### Decision

I examined the transferred documents and have decided to exempt them in full under subsections 7(2), 37(2)(b), 47E(a), and 47E(d) and sections 47F and 47G of the FOI Act.

### Reasons

#### Section 7 – Exemption of certain persons and bodies

Section 7 of the FOI Act provides that an agency is exempt from the operations of the FOI Act in relation to certain documents.

Subsection 7(2) states:

*The persons, bodies and Departments specified in Part II of Schedule 2 are exempt from the operation of this Act in relation to the documents referred to in that Schedule in relation to them.*

The Australian Information Commissioner has issued Guidelines under section 93A to which regards must be had for the purpose of performing a function, or exercising a power, under the FOI Act. The Guidelines at [2.10] explain that:

Subsection 7(2) (supplemented by Schedule 2, Part II) lists agencies that are exempt from the operation of the FOI Act in relation to particular types of documents ...

An examination of documents reveals that they are documents specified in Part II of Schedule 2 of the FOI Act. Therefore, I am exempting the documents under subsection 7(2) of the FOI Act.

#### Section 37 – Documents affecting enforcement of law and protection of public safety

(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.*

The factors in favour of release I took into consideration under section 37 include:

- Whether the information contained in the documents was for the purpose of preventing, detecting, investigating or dealing with matters arising out of a breach or evasion of law;
- Whether the information was for the maintenance or enforcement of lawful methods of investigation;
- Whether the information, if released, would prejudice the effectiveness of lawful methods or procedures of investigation;
- Whether release would affect the lawful methods for the protection of public safety;
- The object of the FOI Act, which encourages disclosure to information held by government agencies, subject only to certain exemptions; and
- The extent to which the information is already a matter of public knowledge.

The factors against the release of the documents under section 37 include:

- The information contained in the documents was created for the purpose of preventing, detecting, and investigating breach or evasion of law;
- The information contained in the documents is for the maintenance or enforcement of lawful methods of investigation;
- The information in the documents, if made public, would be likely to damage the effectiveness of the methods and procedures used by AUSTRAC to detect, investigate or deal with breaches or evasions of the law; and
- The information is not a matter of public knowledge.

AUSTRAC's contribution to the administration of justice through its expertise in countering money laundering and the financing of terrorism is well publicised. Examples of AUSTRAC's contribution have been made public and can be found in the '*AUSTRAC typologies and case studies report*'.

However, the level of detail contained in the methods and procedures used by AUSTRAC to detect and investigate breaches or evasions of law is not publicly available. The release of such information could allow criminals or terrorists to adopt measures to circumvent these methods and procedures.

On balance, when I consider all factors for and against disclosure of the documents, my decision is that exempting them in full under subsection 37(2)(b) outweighs the consideration for disclosure, particularly given that the nature of the information, if released, would prejudice the effectiveness of methods and procedures for preventing, detecting and investigating breaches or evasions of law.

#### **Section 47E – Public interest conditional exemptions – certain operations of agencies**

*A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;*

*(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

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

The factors in favour of release I took into consideration under subsections 47E(a) and 47E(d) include:

- Whether the information contained in the documents would prejudice the effectiveness of a procedure or method for the conduct of a test or examination;
- Whether the information if released would have substantial adverse effect on the proper and efficient conduct of the operations of an agency; and
- The extent to which the information is already a matter of public knowledge.

The factors against the release of the documents under subsections 47E(a) and 47E(d) include:

- The information contained in the documents would prejudice the effectiveness of a procedure or method for the conduct of a test or examination;
- The information contained in the documents, if released, would have substantial adverse effects on the proper and efficient conduct of the operations of an agency; and
- The information is not a matter of public knowledge.

The object of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) is to fulfil Australia's international obligations to combat financing of terrorism, combat money laundering, and to address any international concerns relating to those matters.

AUSTRAC must always be mindful of the interest of powerful criminal and terrorist organisations in obtaining insight into AUSTRAC's operations. If too much insight is given into AUSTRAC's methodologies, it heightens the risk that AUSTRAC's operations could be compromised or sabotaged and AUSTRAC's intelligence products could be circumvented.

Parts of the documents cover AUSTRAC's operations in significant detail. I consider that the disclosure of this level of detailed information would give too great an insight into how AUSTRAC operates and would impede effective working relationship with AUSTRAC's stakeholders. It would result in prejudice to the proper and efficient conduct of the agency's operations.

I considered all factors for and against disclosure of the relevant information and decided to exempt the documents in full under subsections 47E(a) and 47E(d) because the factors against release outweigh the consideration for disclosure, particularly given the detailed and confidential nature of the information.

### ***Exempting the documents in part under section 47F***

#### **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.*

Section 4 of the FOI Act provides that ‘personal information’ has the same meaning as in the *Privacy Act 1988*. Section 6 of the *Privacy Act* provides that:

***personal information*** means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) *whether the information or opinion is true or not; and*
- (b) *whether the information or opinion is recorded in a material form or not.*

The Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act in paragraphs [6.116] – [6.117] explain:

6.116 Personal information means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion (4 4(1)). In other words, personal information:

- identifies, or could identify, a person
- says something about a person
- may be opinion
- may form part of a database
- may be true or untrue
- relates to a natural person.

6.117 Personal information can include a person’s name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

I have taken the below factors taken into consideration:

- the definition of the personal information under section 4 of the FOI Act;
- the nature of the information, for example whether the disclosure would cause 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.

I have also taken the below factors against disclosing the information into consideration:

- release of the information could reasonably be expected to prejudice the protection of an individual’s right to privacy; and
- the information is not a matter of public knowledge and/or well known.

Having examined document 2, I am satisfied that some of the information is personal information as it identifies a person and provides personal information about an individual.

After considering all the relevant factors, I consider that the importance of maintaining the individual’s right to privacy outweighs the factors in favour of disclosure.

Accordingly, I have decided that part of the information contained within document 2 is conditionally exempt under section 47F of the FOI Act.

#### **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, ...*

I have taken the below factors taken into consideration:

- the nature of the information and 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.

I have also taken the below factors against disclosing the information into consideration:

- the disclosure of information relating to the business, commercial or financial affairs of the third party could be considered as unreasonable disclosure;
- the information is not a matter of public knowledge and/or well known; and

Having examined document 2, I am satisfied that releasing part of the information within the document could involve the unreasonable disclosure of the financial or business affairs of the third party.

After considering all the relevant factors I consider the importance of maintaining the right to privacy of the business or financial affairs of the third party outweighs the factors in favour of disclosure.

Accordingly, I have decided that part of the information within document 2 is conditionally exempt under section 47G of the FOI Act.

### **Public interest considerations**

I have considered the public interest factors for subsections 47E(a) and 47E(d) and sections 47F and 47G of the FOI Act in my decision. My findings are as follows:

#### ***Section 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 the document if it is conditionally exempt, unless, access to the document at that time would be on balance, contrary to the public interest.

I considered section 11B in order to determine if access to the documents, exempt in part under subsections 47E(a) and 47E(d) and sections 47F and 47G of the FOI Act, is contrary to the public interest.

***Section 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.*

AUSTRAC is Australia's anti-money laundering and counter-terrorism financing regulator. It is a specialist financial intelligence unit and is responsible for administering the *Financial Transaction Reports Act 1988* (FTR Act) and the AML/CTF Act. Full details about AUSTRAC can be found at <http://www.austrac.gov.au/about-us>.

The object of the AML/CTF Act is to fulfil Australia's international obligations to combat financing of terrorism; combat money laundering; and to address any international concerns relating to those matters.

It is an offence under section 121 of the AML/CTF Act to release any information which was obtained under the FTR Act or the AML/CTF Act, unless it was for a directly related purpose, for example, in accordance of the objects of these Acts, or in performance of the AUSTRAC CEO's functions.

Although release of documents under the FOI Act is part of the AUSTRAC CEO's functions, the extensive coverage of the secrecy provisions in the AML/CTF Act, and the seriousness of the penalties which can be imposed for breach of secrecy, indicates that Parliament intended that the release of AUSTRAC information is not in the public interest.

The document reveals methods of analysis used in recognising organised criminal activity directly related to AUSTRAC's intelligence function. Therefore, I am of the view that if the information in the document was to be made public, it would be likely to damage the effectiveness of the methods and procedures used by AUSTRAC to detect, investigate and deal with breaches or evasions of the law.

Releasing the documents would also prejudice the effectiveness of those methods by allowing organised crime to adopt counter measures to defeat such analysis, and it would damage AUSTRAC's relations with domestic and overseas partner agencies.

Therefore, after considering all the relevant public interest factors, I have decided that granting access to the documents would be contrary to the public interest.

## **Evidence/Material on which my findings are based**

In reaching my decision to release or exempt the documents in full or in part, I relied on the following documentary evidence:

- *Freedom of Information Act 1982*;
- Guidelines issued by the Australian Information Commissioner; and
- Details of the request received by the Australian Securities and Investments Commission on 29 August 2016 and the portion subsequently transferred to AUSTRAC on 14 July 2016.

## ATTACHMENT B

### Review Rights

The following review rights apply.

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. 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.

Under section 53A of the FOI Act you may have ground for review under section 54 if you can establish that there are other documents held by AUSTRAC which have not been released.

Applications for review of the decision should be addressed to:

**Australian Transaction Reports and Analysis Centre**  
Freedom of Information  
c/- Attorney General's Department  
3-5 National Circuit  
BARTON ACT 2600  
Facsimile +612 6120 2601  
[www.austrac.gov.au](http://www.austrac.gov.au)

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

### Office of the Australian Information Commissioner

As part of the 2016-17 Budget, the OAIC has been allocated \$37 million over the next four years to fund their ongoing Privacy and Freedom of Information functions. The OAIC will therefore remain operational and will continue to conduct Information Commissioner (IC) reviews.

IC review applications can be made to:

**Office of the Australian Information Commissioner**  
GPO Box 5218  
SYDNEY NSW 2001  
[enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

For further information about IC reviews please refer to the OAIC website.

### Administrative Appeals Tribunal

An application may be made to the Administrative Appeals Tribunal (AAT) after the OAIC has made a decision. The AAT may also review a decision by the OAIC not to undertake a review. An application must be submitted to the AAT within 28 days of being notified of the decision by the OAIC. The AAT can be contacted on 1300 366 700.

### Complaints

If you are not satisfied with the way AUSTRAC has processed your Freedom of Information request, you can complain to the OAIC. 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, however, the complaint should set out the grounds on which it is considered the action taken in relation to the FOI request should be investigated. Complaints can be made to the OAIC at the address listed above.

For up to date information please visit the OAIC website at <https://www.oaic.gov.au>.