

Our ref: 283/2016



ASIC

Australian Securities & Investments Commission

21 October 2016

Mr Michael Johnstone

Email: foi+request-2178-143054fe@righttoknow.org.au

Level 7, 120 Collins Street,
Melbourne VIC 3000
GPO Box 9827, Melbourne VIC 3001
DX 423 Melbourne

Telephone: +61 3 9280 3200

Facsimile: +61 3 9280 3444

www.asic.gov.au

Dear Mr Johnstone

FREEDOM OF INFORMATION (FOI) APPLICATION – NOTICE OF DECISION

I refer to your 2 emails received via our Freedom of Information (FOI) email address on 29 August 2016 in which you request:

"...a copy of any information that the department has from the 2015/2016 tax year for:

*THE LAMATTINA GROUP
VIC B1970586*

*LAMATTINA SUPERANNUATION PTY LTD
ACN 159 928 177*

*ANGELO R LAMATTINA PTY LTD
ACN 610 694 178*

*ANTHONY 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 AND T LAMATTINA PTY. LTD.
ACN 007 418 948..."*

and

"...A & G LAMATTINA & SONS PTY. LTD..." (your request).

I also refer to my letter dated 13 September 2016 (**Notice of third party consultation**) (Attached). In that letter I notified you that I would consult a third party in relation to documents sought by you in accordance with section 27 of the FOI Act. I advise that I consulted an affected third party to provide them with an opportunity to make a submission in relation to release of the documents. I received a submission from the third party. In deciding whether or not to release the documents, the FOI-decision maker must objectively consider all the relevant factors involved in relation to the application, including views contained in any submission from an affected party.

Your request

I advised in the Notice of third party consultation that, although you request "...a copy of information..." I understand that you are seeking documents.

I understand from your request that you are seeking any documents received by ASIC in the 2015/2016 financial year, that is, 1 July 2015 to 30 June 2016 pertaining to the 10 companies listed in your request (**the Companies**).

I advise that I am the authorised decision maker for the purposes of section 23(1) of the FOI Act.

I advise that I have located 5 documents that fall within the terms of your request and have included them in the attached schedule. They are all Form 362 – *Notification of appointment or cessation of a registered agent by a company* (**Forms 362**).

My decision

I have decided **grant access in full** to the Forms 362. My reasons are provided below.

Third Party Right to Review

Please note that access to the documents cannot be provided until the affected third party has been given the opportunity to seek either an internal review within ASIC of the decision or review by the Australian Information Commissioner. As the decision is to grant access to the document, any application for review of the decision by the affected third party must be made within 30 days of notice of this decision, which expires **Monday, 21 November 2016**.

Reasons – Business exemption does not apply

Business Exemption – 47G FOI Act

Section 47G(1) of the FOI Act states:

'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.'

Forms 362 contain information concerning business affairs of the Companies. In particular, the key purpose of the Forms 362 is to notify ASIC that an ASIC registered agent has been appointed to the Companies and to authorise ASIC to provide correspondence and details relating to the Companies to that registered agent. The Forms 362 notify the identity and contact address of the appointed ASIC registered agent for the purposes of this correspondence.

ASIC Registered Agent

An ASIC registered agent acts as an intermediary between an Australian company and ASIC to help the company meet its lodgment obligations more efficiently.

ASIC registered agents must meet certain criteria during registration with ASIC. This includes:

- encouraging quick notification to ASIC if the details of a company change, so that the registered agent can lodge any changes with us within the required lodgment period; and
- lodging documents electronically on behalf of the company.

To continue to meet the criteria of registration, an ASIC registered agent must regularly lodge documents with ASIC.

Form 362 and section 47G - could reasonably be expected to, unreasonably affect that person adversely

Although the Form 362 is not a publicly available document itself, the category of information contained in the document is usually information that is in the public domain. For example, an ASIC registered agent, when appointed, lodges forms on behalf of a company. This includes commonly lodged documents that are publicly available such as the Form 201 – *Registration of a company*, Form 484 – *Change to company details* and Form 388 *Copy of Financial Statements and Reports* (where applicable). These forms contain the full details of the lodging party including the identity of the ASIC registered agent, the registered agent number and the contact address.

The Guidelines of the Office of the Australian Information Commissioner at 5.14, 6.165, 6.168 and 6.40 state that:

*"The test 'would or could reasonably expected' requires the decision maker to assess the likelihood of the predicted or forecast event, effect or **damage** occurring after disclosure of a document.*

"There must be real and substantial grounds for expecting the damage to occur which can be supported by evidence or reasoning. There cannot merely be an assumption or allegation of damage or allegation that damage may occur if the document were released."

"It refers to an expectation that is based on reason. Mere assertion or speculative possibility is not enough."

"Where disclosure would result in the release of facts already in the public domain, that disclosure would not amount to an unreasonable adverse effect on business affairs"

If a Form 362 were to be disclosed, it would disclose the identity and business address of the ASIC registered agent appointed to a company. I am of the view that, as this category of information is usually in the public domain, it is unlikely that the disclosure of this appointment could unreasonably affect the continuation of the appointment with any adverse effect to either the business or the ASIC registered agent.

There was no evidence provided in the submission to demonstrate real and substantial grounds for expecting an adverse effect as a result of the disclosure of the appointment document.

It is not likely that disclosure of the identity and appointment of an ASIC registered agent contained in other regularly lodged documents that are publicly available would have any adverse effect on the appointment or would affect either the company or the appointed ASIC registered agent.

Further, Section 146A of the *Corporations Act 2001* states 'A contact address is the address to which communications and notices are sent from ASIC to the company'. The contact address for the Companies is the postal address of the ASIC Registered Agent appointed for the Companies (as it appears in the Forms 362). The address will appear on a paid extract that can be obtained by any member of the public.

Not conditionally exempt

In my view, disclosure of the Forms 362 could not reasonably be expected to unreasonably affect that organisation adversely in respect of its lawful business, commercial or financial affairs. Therefore, the document is not conditionally exempt under section 47G of the FOI Act.

For these reasons, I have decided to grant access to the Forms 362 in full without any deleted material.

Fees

I have decided to waive all applicable charges associated with processing your request.

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 NSW 2001 or by email to foirequest@asic.gov.au.
2. You may within 60 days after the day on which you have been notified of this decision, apply in writing to the Office of the Australian Information Commissioner (OAIC) for a review of my decision under section 54N of the FOI Act. You may contact the OAIC by post at GPO Box 5218 Sydney NSW 2001, by email at enquiries@oaic.gov.au or by telephone on 1300 363 992.

Right to complain

3. You may lodge a complaint with the OAIC in relation to the conduct of ASIC in the handling of this request. You may contact the OAIC as described above.

Should you have any questions about your Freedom of Information request, you may contact me by email at fleur.forsyth@asic.gov.au.

Yours sincerely



Fleur Forsyth

Registry

(Authorised Decision-maker pursuant to section 23(1) of the FOI Act)

Schedule of Documents

Doc no.	Description of document	No. of folios (pages)
1.	2E3438209 Form 362 – <i>Notification of appointment or cessation of a registered agent by a company</i> – Angelo R Lamattina Pty Ltd ACN 610 694 178	2
2.	2E3437363 Form 362 – <i>Notification of appointment or cessation of a registered agent by a company</i> – Anthony R Lamattina Pty Ltd ACN 610 690 287	2
3.	2E3438990 Form 362 – <i>Notification of appointment or cessation of a registered agent by a company</i> – Josephine T Lamattina Pty Ltd ACN 610 689 846	2
4.	2E3437986 Form 362 – <i>Notification of appointment or cessation of a registered agent by a company</i> – Robert A Lamattina Pty Ltd ACN 610 690 063	2
5.	2E3438654 Form 362 – <i>Notification of appointment or cessation of a registered agent by a company</i> – Russell R Lamattina Pty Ltd ACN 610 690 036	2

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13 September 2016

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"...a copy of any information that the department has from the 2015/2016 tax year for:

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CAN 007 418 948..."*

and

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Access to documents

The *Freedom of Information Act 1982 (Cth)* (**FOI Act**) provides a right to obtain access to **documents** of an agency and not information. Although you request "...a copy of any information..." I understand that you are seeking copies of documents.

Therefore, I confirm that your request will be treated as a request under the **FOI Act** and provide the following information about the processing of your FOI request.

Third party consultation

I confirm that I will be consulting with third parties in relation to the documents sought by you, in accordance with section 27 of the FOI Act.

The documents requested contain information which may be information about a person's business or professional affairs and/or information about the business affairs of another organisation (section 27). Under the FOI Act information in documents under these provisions may be exempt from release. The FOI Act makes provision for consulting with any affected person or organisation to obtain their views before a final decision is made on whether to release the documents. In deciding whether or not to release the documents, the FOI decision-maker must objectively consider all the relevant factors involved in relation to the application, including the views contained in any submission from an affected party.

As the documents you have requested contain information that is information about another organisation, it is appropriate that I consult with the affected parties to give them an opportunity to make a submission on release.

Timing of decision

As a general rule, an application must be processed within 30 days pursuant to section 15(5)(b) of the FOI Act. However, certain exceptions also apply, for example where it becomes necessary to consult with affected third parties in respect to the disclosure of documents caught by the terms of the request. Section 15(6)(a) of the FOI Act extends this period by a further 30 days, to enable the affected parties to make their submission. In the event that the authorised FOI decision-maker decides, contrary to the views of an affected party, to release the documents which are the subject of the consultations, access to the documents cannot be granted until the affected parties have been given the opportunity to seek either:

- an internal review of the decision (within ASIC)
- a review of the decision with the Office of the Australian Information Commissioner, or
- a review of a reviewable decision with the Commonwealth Administrative Appeals Tribunal.

Charges

You should note that, while the first five hours of decision making is free of charge, charges may be imposed for time spent in searching for and retrieving relevant documents, photocopying, postage and any decision-making time in excess of the first five hours.

You will be provided with a preliminary assessment of the charges before the final decision is made and thereafter, be told the final assessment amount to be charged at the time of the decision regarding any access to documents.

Records held by ASIC

ASIC is Australia's corporate, markets and financial services regulator. We regulate Australian companies, financial markets, financial services organisations and professionals who advise in investments, superannuation, insurance, deposit taking and credit. Generally most documents lodged

with ASIC under provision of the *Corporations Act 2001* are **publicly available for a fee**. Only *some* documents lodged with ASIC are not publicly available as pursuant to section 1274(2) of the *Corporations Act 2001*.

Current and historical extracts including information about a company, details of directors, address information, members (shareholders), annual returns, financial reports and managed investment schemes, is available for purchase through our **ASIC Connect portal**.

Some company deregistration and strike off action information is available on our ASIC Gazette on the ASIC website. Deregistration notices are published on the Insolvency notices website at insolvencynotices.asic.gov.au.

Publicly available documents

Please be aware that documents on ASIC's registers that are publicly available fall outside of the operation of FOI Act. Section 12(1)(b) of FOI Act states "*a person is not entitled to obtain access under this Part to a document that is open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge*,".

As noted above, most documents lodged with ASIC are publicly available.

How to access publicly available documents

You may obtain publicly available information and documents through ASIC Connect at www.asic.gov.au/search-organisations or through one of our information brokers. More details about our information brokers can be found at www.asic.gov.au/informationbrokers. Please note fees apply.

If you need assistance accessing documents via ASIC Connect, please call our Customer Contact Centre (CCC) on 1300 300 630. The CCC business hours are Monday to Friday 8:30 am to 5:00 pm (AEST). The CCC closes for business on national public holidays and has limited services available on public holidays for each state and territory.

Agency Publication Obligations

In the event that copies of the documents are released to you in accordance with your request, I advise that section 11C of the FOI Act requires ASIC to publish on our public website copies of those documents released to you unless certain exceptions apply.

Should you have any questions about your Freedom of Information request, you may contact me by email at fleur.forsyth@asic.gov.au.

Yours sincerely



Fleur Forsyth

Registry (Authorised Decision-maker pursuant to section 23(1) of the FOI Act)